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A DICTIONARY

OF

ENGLISH LAW

BY

W. J. BYRNE

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PREFACE

THIS book was originally intended to be a new edition of the late Mr. Sweet's *Dictionary of English Law*: but there is so little of Mr. Sweet's work, and that little has been so much altered, that the author has felt justified in publishing the book over his own name.

In a work of this size, dealing with the whole vast subject of English law, many things are necessarily omitted which would be inserted if more space were available. Thus, for instance, cases are not cited as a rule; for the citation of cases, unless done thoroughly, is useless; and thorough citation would have doubled the size of the work.

In the edition of Cowel's *Law Dictionary* which was published in 1727, the title page sets out that the book is "very much Augmented and Improved by the addition of many Thousand Words found in our Histories, Antiquities, Cartularies, Rolls, Registers, and other Manuscript Records"; and down to our own time law dictionaries have really been, to a large extent, glossaries of barbarous Latin, Norman-French, Early English and Anglo-Saxon words. But the only persons who want such glossaries are the few experts who actually refer to records such as those mentioned by the editor of Cowel; and these persons will not turn to a law dictionary for a little information as to matters with which such a book is not properly conversant. All

archaic words have, therefore, been omitted, except in so far as they relate to the law.

No attempt whatever has been made to deal with Roman, Scottish, or Colonial law. This book is a dictionary only of English law: and as such it is published, in the hope that it will be found to fill a place—which would appear to be vacant—between the existing law dictionaries and the great encyclopædic work published over the name of the late Lord Halsbury.

The author knows only too well that there must necessarily be many defects in a book which covers so large a field and which has been written singlehanded. But it represents several years of work, and, for what it may be worth, it is offered, not merely to both branches of the legal profession, but also to those outside this country who are interested in English law, ancient as well as modern.

W. J. B.

8 STONE BUILDINGS,
LINCOLN'S INN.
February, 1923.

TABLE OF REGNAL YEARS OF ENGLISH SOVEREIGNS.

"In England, in the seventh, and so late as the thirteenth century, the year was reckoned from Christmas Day; but in the twelfth century, the Anglican Church began the year on the 25th of March; which practice was also adopted by civilians in the fourteenth century. This Style continued until the reformation of the Calendar by Stat. 24 George II. c. 23, by which the Legal year was ordered to commence on the 1st of January, in 1753. It appears, therefore, that two calculations have generally existed in England for the commencement of the year; viz.:—

"1. The HISTORICAL year, which has, for a very long period, begun on the 1st of January.

"2. The CIVIL, ECCLESIASTICAL, and LEGAL year, which was used by the Church, and in all public instruments, until the end of the thirteenth century, began at Christmas. In and after the fourteenth century, it commenced on the 25th of March, and so continued until the 1st of January, 1753.

"The confusion which arose from there being two modes of computing dates in one kingdom must be sufficiently apparent; for the Legislature, the Church, and Civilians, referred every event which happened between the 1st of January and the 25th of March to a different year from Historians.

"To avoid, as far as possible, the mistakes which this custom produced, it was usual to *add* the date of the *Historical* to that of the *Legal* year, when speaking of any day between the 1st of January and the 25th of March, thus:—

January 30, $164\frac{8}{9}$ { *i.e.* the CIVIL and LEGAL year, *i.e.* the HISTORICAL year;

or, thus:—

January 30, 1648-9.

"This practice, common as it has long been, is nevertheless frequently misunderstood; and even learned and intelligent persons are sometimes perplexed by dates being so written. The explanation is, however, perfectly simple, for the *lower* or *last figure* always indicates the year according to our present computation.

"In SCOTLAND, the year was ordered to commence on the 1st of January instead of the 25th of March, 1600, by a proclamation dated the 17th of December, 1599; but the Old Style continued to be used until altered in 1752, pursuant to the Stat. 24 George II."—*Nicolas's Chronology.*

"Public documents in England, from the time of Richard the First, down to the present day, have been usually dated with the year of the reign of the sovereign, and not with the year of our Lord. (We must, however, except the years following the death of Charles the First, until the restoration of Charles the Second [1648-9 to 1660], when the name of the sovereign giving place to 'The Keepers of the Libertie of England by Authority of Parliament,' during the first five years, and afterwards, 'Oliver Lord Protector of the Commonwealth of England, Scotland and Ireland and the Dominions thereto belonging,' the year of our Lord, the month and the day of the month were the only dates given). Consequently, to be able to determine the year of our Lord, for any year of a sovereign's reign, we must have a chronological list, showing the first and last date of the reign of each sovereign.

"In the early years of the English history, after the Norman Conquest, it appears that the reign of the sovereign did not commence until some act of sovereignty had been performed; the commencement of the reign being sometimes reckoned from the day of the coronation, of which practice there is evidence amongst the memoranda taken from the 'Black Book' of the Exchequer, under the date '16 November,' where the years of the reign of Henry III. have been counted from his coronation. It is obvious, however, that the dates given in the 'Public Records' for the commencement and determination of each sovereign's reign must alone be recognised, to the exclusion of all other systems, when our object is to verify written dates to be met with in the Legal Records. A question concerning the date of the accession of the sovereign was taken into consideration in the first year of the reign of Elizabeth in Michaelmas Term, when the Judges, Chief Baron, Attorney General, and Solicitor General formed several resolutions in relation to the statute (1 Edw. VI. c. 7) for the discontinuance of certain offices on the demise of the king; the first being that 'the king who is heir or successor may write and begin his reign the said day that his progenitor or predecessor died.'"—BOND, *Handybook of Rules and Tables for Verifying Dates*, 1873.

Of the two dates standing opposite to each year of a reign in the following Table, the first is the commencement and the second the end of the *regnal* year. In using this Table, it is necessary to observe that it is *calculated according to the Common and Historical year, viz., from the 1st of January;* but, as the *Civil*, Ecclesiastical and Legal year for a long period, began *on the 25th of March*, all dates between the 1st of January and the 25th of March belong according to the *Civil* computation, to one year *earlier* than the Historical year.

For example:—From the 1st of January to the 25th of March, in the first year of the reign of William the Conqueror, was in the *Civil* year, 1066, instead of 1067. For the same reason, Edward III.'s reign is sometimes said to have begun on the 25th of January, 1326, instead of the 25th of January, 1327; Henry V.'s on the 21st of March 1412, instead of the 21st of March, 1413; Edward IV.'s on the 4th of March, 1460, instead of the 4th of March, 1461 and the same remark, *mutatis mutandis*, applies to the commencement of the reigns of Edward VI., James I., Charles II., James II., William and Mary, and Queen Anne, according to whether the *Historical* or *Civil* year be alluded to.

WILLIAM THE FIRST.

CROWNED DECEMBER 25.

1 {14 Oct. 1066, 13 Oct. 1067.	6 {14 Oct. 1071, 13 Oct. 1072.	10 {14 Oct. 1075, 13 Oct. 1076.	14 {14 Oct. 1079, 13 Oct. 1080.	18 {14 Oct. 1083, 13 Oct. 1084.
2 {14 Oct. 1067, 13 Oct. 1068.	7 {14 Oct. 1072, 13 Oct. 1073.	11 {14 Oct. 1076, 13 Oct. 1077.	15 {14 Oct. 1080, 13 Oct. 1081.	19 {14 Oct. 1084, 13 Oct. 1085.
3 {14 Oct. 1068, 13 Oct. 1069.	8 {14 Oct. 1073, 13 Oct. 1074.	12 {14 Oct. 1077, 13 Oct. 1078.	16 {14 Oct. 1081, 13 Oct. 1082.	20 {14 Oct. 1085, 13 Oct. 1086.
4 {14 Oct. 1069, 13 Oct. 1070.	9 {14 Oct. 1074, 13 Oct. 1075.	13 {14 Oct. 1078, 13 Oct. 1079.	17 {14 Oct. 1082, 13 Oct. 1083.	21 {14 Oct. 1086, 9 Sept. 1087.
5 {14 Oct. 1070, 13 Oct. 1071.				

WILLIAM THE SECOND.

1 26 Sept. 1087, 25 Sept. 1088.	4 26 Sept. 1090, 25 Sept. 1091.	7 26 Sept. 1093, 25 Sept. 1094.	10 26 Sept. 1096, 25 Sept. 1097.	12 26 Sept. 1098, 25 Sept. 1099.
2 26 Sept. 1088, 25 Sept. 1089.	5 26 Sept. 1091, 25 Sept. 1092.	8 26 Sept. 1094, 25 Sept. 1095.	11 26 Sept. 1097, 25 Sept. 1098.	13 26 Sept. 1099, 2 Aug. 1100.
3 26 Sept. 1089, 25 Sept. 1090.	6 26 Sept. 1092, 25 Sept. 1093.	9 26 Sept. 1095, 25 Sept. 1096.		

HENRY THE FIRST.

1 5 Aug. 1100, 4 Aug. 1101.	9 5 Aug. 1108, 4 Aug. 1109.	16 5 Aug. 1115, 4 Aug. 1116.	23 5 Aug. 1122, 4 Aug. 1123.	30 5 Aug. 1129, 4 Aug. 1130.
2 5 Aug. 1101, 4 Aug. 1102.	10 5 Aug. 1109, 4 Aug. 1110.	17 5 Aug. 1116, 4 Aug. 1117.	24 5 Aug. 1123, 4 Aug. 1124.	31 5 Aug. 1130, 4 Aug. 1131.
3 5 Aug. 1102, 4 Aug. 1103.	11 5 Aug. 1110, 4 Aug. 1111.	18 5 Aug. 1117, 4 Aug. 1118.	25 5 Aug. 1124, 4 Aug. 1125.	32 5 Aug. 1131, 4 Aug. 1132.
4 5 Aug. 1103, 4 Aug. 1104.	12 5 Aug. 1111, 4 Aug. 1112.	19 5 Aug. 1118, 4 Aug. 1119.	26 5 Aug. 1125, 4 Aug. 1126.	33 5 Aug. 1132, 4 Aug. 1133.
5 5 Aug. 1104, 4 Aug. 1105.	13 5 Aug. 1112, 4 Aug. 1113.	20 5 Aug. 1119, 4 Aug. 1120.	27 5 Aug. 1126, 4 Aug. 1127.	34 5 Aug. 1133, 4 Aug. 1134.
6 5 Aug. 1105, 4 Aug. 1106.	14 5 Aug. 1113, 4 Aug. 1114.	21 5 Aug. 1120, 4 Aug. 1121.	28 5 Aug. 1127, 4 Aug. 1128.	35 5 Aug. 1134, 4 Aug. 1135.
7 5 Aug. 1106, 4 Aug. 1107.	15 5 Aug. 1114, 4 Aug. 1115.	22 5 Aug. 1121, 4 Aug. 1122.	29 5 Aug. 1128, 4 Aug. 1129.	36 5 Aug. 1135, 1 Dec. 1135.
8 5 Aug. 1107, 4 Aug. 1108.				

STEPHEN.

1 26 Dec. 1135, 25 Dec. 1136.	5 26 Dec. 1139, 25 Dec. 1140.	9 26 Dec. 1143, 25 Dec. 1144.	13 26 Dec. 1147, 25 Dec. 1148.	17 26 Dec. 1151, 25 Dec. 1152.
2 26 Dec. 1136, 25 Dec. 1137.	6 26 Dec. 1140, 25 Dec. 1141.	10 26 Dec. 1144, 25 Dec. 1145.	14 26 Dec. 1148, 25 Dec. 1149.	18 26 Dec. 1152, 25 Dec. 1153.
3 26 Dec. 1137, 25 Dec. 1138.	7 26 Dec. 1141, 25 Dec. 1142.	11 26 Dec. 1145, 25 Dec. 1146.	15 26 Dec. 1149, 25 Dec. 1150.	
4 26 Dec. 1138, 25 Dec. 1139.	8 26 Dec. 1142, 25 Dec. 1143.	12 26 Dec. 1146, 25 Dec. 1147.	16 26 Dec. 1150, 25 Dec. 1151.	19 26 Dec. 1153, 25 Oct. 1154.

HENRY THE SECOND.

1 19 Dec. 1154, 18 Dec. 1155.	8 19 Dec. 1161, 18 Dec. 1162.	15 19 Dec. 1168, 18 Dec. 1169.	22 19 Dec. 1175, 18 Dec. 1176.	29 19 Dec. 1182, 18 Dec. 1183.
2 19 Dec. 1155, 18 Dec. 1156.	9 19 Dec. 1162, 18 Dec. 1163.	16 19 Dec. 1169, 18 Dec. 1170.	23 19 Dec. 1176, 18 Dec. 1177.	30 19 Dec. 1183, 18 Dec. 1184.
3 19 Dec. 1156, 18 Dec. 1157.	10 19 Dec. 1163, 18 Dec. 1164.	17 19 Dec. 1170, 18 Dec. 1171.	24 19 Dec. 1177, 18 Dec. 1178.	31 19 Dec. 1184, 18 Dec. 1185.
4 19 Dec. 1157, 18 Dec. 1158.	11 19 Dec. 1164, 18 Dec. 1165.	18 19 Dec. 1171, 18 Dec. 1172.	25 19 Dec. 1178, 18 Dec. 1179.	32 19 Dec. 1185, 18 Dec. 1186.
5 19 Dec. 1158, 18 Dec. 1159.	12 19 Dec. 1165, 18 Dec. 1166.	19 19 Dec. 1172, 18 Dec. 1173.	26 19 Dec. 1179, 18 Dec. 1180.	33 19 Dec. 1186, 18 Dec. 1187.
6 19 Dec. 1159, 18 Dec. 1160.	13 19 Dec. 1166, 18 Dec. 1167.	20 19 Dec. 1173, 18 Dec. 1174.	27 19 Dec. 1180, 18 Dec. 1181.	34 19 Dec. 1187, 18 Dec. 1188.
7 19 Dec. 1160, 18 Dec. 1161.	14 19 Dec. 1167, 18 Dec. 1168.	21 19 Dec. 1174, 18 Dec. 1175.	28 19 Dec. 1181, 18 Dec. 1182.	35 19 Dec. 1188, 6 July 1189.

RICHARD THE FIRST.

1 { 3 Sept. 1189, 2 Sept. 1190.	3 { 3 Sept. 1191, 2 Sept. 1192.	5 { 3 Sept. 1193, 2 Sept. 1194.	7 { 3 Sept. 1195, 2 Sept. 1196.	9 { 3 Sept. 1197, 2 Sept. 1198.
2 { 3 Sept. 1190, 2 Sept. 1191.	4 { 3 Sept. 1192, 2 Sept. 1193.	6 { 3 Sept. 1194, 2 Sept. 1195.	8 { 3 Sept. 1196, 2 Sept. 1197.	10 { 3 Sept. 1198, 6 April 1199.

JOHN.

1 { 27 May 1199, 17 May 1200.	5 { 15 May 1203, 2 June 1204.	9 { 31 May 1207, 14 May 1208.	13 { 12 May 1211, 2 May 1212.	16 { 8 May 1214, 27 May 1215.
2 { 18 May 1200, 2 May 1201.	6 { 3 June 1204, 18 May 1205.	10 { 15 May 1208, 6 May 1209.	14 { 3 May 1212, 22 May 1213.	17 { 28 May 1215, 18 May 1216.
3 { 3 May 1201, 22 May 1202.	7 { 19 May 1205, 10 May 1206.	11 { 7 May 1209, 26 May 1210.	15 { 23 May 1213, 7 May 1214.	18 { 19 May 1216, 19 Oct. 1216.
4 { 23 May 1202, 14 May 1203.	8 { 11 May 1206, 30 May 1207.	12 { 27 May 1210, 11 May 1211.		

Note.—In the 3rd, 5th, 8th, 11th, 14th, and 16th years of John, several days of the month of May, in two succeeding years of our Lord, occurred in the *same* year of that King's reign; thus:—

Anno 3	Ascension Day	1201 (3 May),	to Ascension Day	1202 (22 May).
5	—	1203 (15 May),	—	1204 (2 June).
8	—	1206 (11 May),	—	1207 (30 May).
11	—	1209 (7 May),	—	1210 (26 May).
14	—	1212 (3 May),	—	1213 (22 May).
16	—	1214 (8 May),	—	1215 (27 May).

Consequently every day from the 4th to the 22nd of May, 1201, and from the 4th to the 22nd of May, 1202, both inclusive, occurred in the *first* year of King John; and no document dated from the 4th to the 22nd of May, 1 John, can be assigned with certainty to the right year of our Lord; and in a similar manner with respect to certain days in the other years above mentioned.

HENRY THE THIRD.

1 { 28 Oct. 1216, 27 Oct. 1217.	13 { 28 Oct. 1228, 27 Oct. 1229.	25 { 28 Oct. 1240, 27 Oct. 1241.	37 { 28 Oct. 1252, 27 Oct. 1253.	49 { 28 Oct. 1264, 27 Oct. 1265.
2 { 28 Oct. 1217, 27 Oct. 1218.	14 { 28 Oct. 1229, 27 Oct. 1230.	26 { 28 Oct. 1241, 27 Oct. 1242.	38 { 28 Oct. 1253, 27 Oct. 1254.	50 { 28 Oct. 1265, 27 Oct. 1266.
3 { 28 Oct. 1218, 27 Oct. 1219.	15 { 28 Oct. 1230, 27 Oct. 1231.	27 { 28 Oct. 1242, 27 Oct. 1243.	39 { 28 Oct. 1254, 27 Oct. 1255.	51 { 28 Oct. 1266, 27 Oct. 1267.
4 { 28 Oct. 1219, 27 Oct. 1220.	16 { 28 Oct. 1231, 27 Oct. 1232.	28 { 28 Oct. 1243, 27 Oct. 1244.	40 { 28 Oct. 1255, 27 Oct. 1256.	52 { 28 Oct. 1267, 27 Oct. 1268.
5 { 28 Oct. 1220, 27 Oct. 1221.	17 { 28 Oct. 1232, 27 Oct. 1233.	29 { 28 Oct. 1244, 27 Oct. 1245.	41 { 28 Oct. 1256, 27 Oct. 1257.	53 { 28 Oct. 1268, 27 Oct. 1269.
6 { 28 Oct. 1221, 27 Oct. 1222.	18 { 28 Oct. 1233, 27 Oct. 1234.	30 { 28 Oct. 1245, 27 Oct. 1246.	42 { 28 Oct. 1257, 27 Oct. 1258.	54 { 28 Oct. 1269, 27 Oct. 1270.
7 { 28 Oct. 1222, 27 Oct. 1223.	19 { 28 Oct. 1234, 27 Oct. 1235.	31 { 28 Oct. 1246, 27 Oct. 1247.	43 { 28 Oct. 1258, 27 Oct. 1259.	55 { 28 Oct. 1270, 27 Oct. 1271.
8 { 28 Oct. 1223, 27 Oct. 1224.	20 { 28 Oct. 1235, 27 Oct. 1236.	32 { 28 Oct. 1247, 27 Oct. 1248.	44 { 28 Oct. 1259, 27 Oct. 1260.	56 { 28 Oct. 1271, 27 Oct. 1272.
9 { 28 Oct. 1224, 27 Oct. 1225.	21 { 28 Oct. 1236, 27 Oct. 1237.	33 { 28 Oct. 1248, 27 Oct. 1249.	45 { 28 Oct. 1260, 27 Oct. 1261.	57 { 28 Oct. 1272, 16 Nov. 1272.
10 { 28 Oct. 1225, 27 Oct. 1226.	22 { 28 Oct. 1237, 27 Oct. 1238.	34 { 28 Oct. 1249, 27 Oct. 1250.	46 { 28 Oct. 1261, 27 Oct. 1262.	
11 { 28 Oct. 1226, 27 Oct. 1227.	23 { 28 Oct. 1238, 27 Oct. 1239.	35 { 28 Oct. 1250, 27 Oct. 1251.	47 { 28 Oct. 1262, 27 Oct. 1263.	
12 { 28 Oct. 1227, 27 Oct. 1228.	24 { 28 Oct. 1239, 27 Oct. 1240.	36 { 28 Oct. 1251, 27 Oct. 1252.	48 { 28 Oct. 1263, 27 Oct. 1264.	

EDWARD THE FIRST.

1	20 Nov. 1272, 20 Nov. 1273.	8	20 Nov. 1279, 20 Nov. 1280.	15	20 Nov. 1286, 20 Nov. 1287.	22	20 Nov. 1293, 20 Nov. 1294.
2	20 Nov. 1273, 20 Nov. 1274.	9	20 Nov. 1280, 20 Nov. 1281.	16	20 Nov. 1287, 20 Nov. 1288.	23	20 Nov. 1294, 20 Nov. 1295.
3	20 Nov. 1274, 20 Nov. 1275.	10	20 Nov. 1281, 20 Nov. 1282.	17	20 Nov. 1288, 20 Nov. 1289.	24	20 Nov. 1295, 20 Nov. 1296.
4	20 Nov. 1275, 20 Nov. 1276.	11	20 Nov. 1282, 20 Nov. 1283.	18	20 Nov. 1289, 20 Nov. 1290.	25	20 Nov. 1296, 20 Nov. 1297.
5	20 Nov. 1276, 20 Nov. 1277.	12	20 Nov. 1283, 20 Nov. 1284.	19	20 Nov. 1290, 20 Nov. 1291.	26	20 Nov. 1297, 20 Nov. 1298.
6	20 Nov. 1277, 20 Nov. 1278.	13	20 Nov. 1284, 20 Nov. 1285.	20	20 Nov. 1291, 20 Nov. 1292.	27	20 Nov. 1298, 20 Nov. 1299.
7	20 Nov. 1278, 20 Nov. 1279.	14	20 Nov. 1285, 20 Nov. 1286.	21	20 Nov. 1292, 20 Nov. 1293.	28	20 Nov. 1299, 20 Nov. 1300.

29	20 Nov. 1300, 20 Nov. 1301.	30	20 Nov. 1301, 20 Nov. 1302.	31	20 Nov. 1302, 20 Nov. 1303.	32	20 Nov. 1303, 20 Nov. 1304.
33	20 Nov. 1304, 20 Nov. 1305.	34	20 Nov. 1305, 20 Nov. 1306.	35	20 Nov. 1306, 7 July 1307.		

EDWARD THE SECOND.

1	8 July 1307, 7 July 1308.	5	8 July 1311, 7 July 1312.	9	8 July 1315, 7 July 1316.	13	8 July 1319, 7 July 1320.
2	8 July 1308, 7 July 1309.	6	8 July 1312, 7 July 1313.	10	8 July 1316, 7 July 1317.	14	8 July 1320, 7 July 1321.
3	8 July 1309, 7 July 1310.	7	8 July 1313, 7 July 1314.	11	8 July 1317, 7 July 1318.	15	8 July 1321, 7 July 1322.
4	8 July 1310, 7 July 1311.	8	8 July 1314, 7 July 1315.	12	8 July 1318, 7 July 1319.	16	8 July 1322, 7 July 1323.

17	8 July 1323, 7 July 1324.	18	8 July 1324, 7 July 1325.
19	8 July 1325, 7 July 1326.	20	8 July 1326, 20 Jan. 1327.

EDWARD THE THIRD.

1	25 Jan. 1327, 24 Jan. 1328.	4	25 Jan. 1330, 24 Jan. 1331.	7	25 Jan. 1333, 24 Jan. 1334.	10	25 Jan. 1336, 24 Jan. 1337.
2	25 Jan. 1328, 24 Jan. 1329.	5	25 Jan. 1331, 24 Jan. 1332.	8	25 Jan. 1334, 24 Jan. 1335.	11	25 Jan. 1337, 24 Jan. 1338.
3	25 Jan. 1329, 24 Jan. 1330.	6	25 Jan. 1332, 24 Jan. 1333.	9	25 Jan. 1335, 24 Jan. 1336.		

12	25 Jan. 1338, 24 Jan. 1339.	13	25 Jan. 1339, 24 Jan. 1340.

ENGLAND.	FRANCE.	ENGLAND.	FRANCE.	ENGLAND.	FRANCE.	ENGLAND.	FRANCE.
14 25 Jan. 1340, 24 Jan. 1341.	1	24 25 Jan. 1350, 24 Jan. 1351.	11	34 25 Jan. 1360, 8 May 1360, 24 Jan. 1361.	21	43 25 Jan. 1369, 11 June 1369, 24 Jan. 1370.	30
15 25 Jan. 1341, 24 Jan. 1342.	2	25 25 Jan. 1351, 24 Jan. 1352.	12	35 25 Jan. 1361, 24 Jan. 1362.		44 25 Jan. 1370, 24 Jan. 1371.	31
16 25 Jan. 1342, 24 Jan. 1343.	3	26 25 Jan. 1352, 24 Jan. 1353.	13	36 25 Jan. 1362, 24 Jan. 1363.		45 25 Jan. 1371, 24 Jan. 1372.	32
17 25 Jan. 1343, 24 Jan. 1344.	4	27 25 Jan. 1353, 24 Jan. 1354.	14	37 25 Jan. 1363, 24 Jan. 1364.		46 25 Jan. 1372, 24 Jan. 1373.	33
18 25 Jan. 1344, 24 Jan. 1345.	5	28 25 Jan. 1354, 24 Jan. 1355.	15	38 25 Jan. 1364, 24 Jan. 1365.		47 25 Jan. 1373, 24 Jan. 1374.	34
19 25 Jan. 1345, 24 Jan. 1346.	6	29 25 Jan. 1355, 24 Jan. 1356.	16	39 25 Jan. 1365, 24 Jan. 1366.		48 25 Jan. 1374, 24 Jan. 1375.	35
20 25 Jan. 1346, 24 Jan. 1347.	7	30 25 Jan. 1356, 24 Jan. 1357.	17	40 25 Jan. 1366, 24 Jan. 1367.		49 25 Jan. 1375, 24 Jan. 1376.	36
21 25 Jan. 1347, 24 Jan. 1348.	8	31 25 Jan. 1357, 24 Jan. 1358.	18	41 25 Jan. 1367, 24 Jan. 1368.		50 25 Jan. 1376, 24 Jan. 1377.	37
22 25 Jan. 1348, 24 Jan. 1349.	9	32 25 Jan. 1358, 24 Jan. 1359.	19	42 25 Jan. 1368, 24 Jan. 1369.		51 25 Jan. 1377, 21 June 1377.	38
23 25 Jan. 1349, 24 Jan. 1350.	10	33 25 Jan. 1359, 24 Jan. 1360.	20				

RICHARD THE SECOND.

1 {22 June 1377, 21 June 1378.	6 {22 June 1382, 21 June 1383.	11 {22 June 1387, 21 June 1388.	16 {22 June 1392, 21 June 1393.	20 {22 June 1396, 21 June 1397.
2 {22 June 1378, 21 June 1379.	7 {22 June 1383, 21 June 1384.	12 {22 June 1388, 21 June 1389.	17 {22 June 1393, 21 June 1394.	21 {22 June 1397, 21 June 1398.
3 {22 June 1379, 21 June 1380.	8 {22 June 1384, 21 June 1385.	13 {22 June 1389, 21 June 1390.	18 {22 June 1394, 21 June 1395.	22 {22 June 1398, 21 June 1399.
4 {22 June 1380, 21 June 1381.	9 {22 June 1385, 21 June 1386.	14 {22 June 1390, 21 June 1391.		
5 {22 June 1381, 21 June 1382.	10 {22 June 1386, 21 June 1387.	15 {22 June 1391, 21 June 1392.	19 {22 June 1395, 21 June 1396.	23 {22 June 1399, 29 Sept. 1399.

HENRY THE FOURTH.

1 {30 Sept. 1399, 29 Sept. 1400.	4 {30 Sept. 1402, 29 Sept. 1403.	7 {30 Sept. 1405, 29 Sept. 1406.	10 {30 Sept. 1408, 29 Sept. 1409.	13 {30 Sept. 1411, 29 Sept. 1412.
2 {30 Sept. 1400, 29 Sept. 1401.	5 {30 Sept. 1403, 29 Sept. 1404.	8 {30 Sept. 1406, 29 Sept. 1407.	11 {30 Sept. 1409, 29 Sept. 1410.	14 {30 Sept. 1412, 20 Mar. 1413.
3 {30 Sept. 1401, 29 Sept. 1402.	6 {30 Sept. 1404, 29 Sept. 1405.	9 {30 Sept. 1407, 29 Sept. 1408.	12 {30 Sept. 1410, 29 Sept. 1411.	

HENRY THE FIFTH.

1 {21 Mar. 1413, 20 Mar. 1414.	3 {21 Mar. 1415, 20 Mar. 1416.	5 {21 Mar. 1417, 20 Mar. 1418.	7 {21 Mar. 1419, 20 Mar. 1420.	9 {21 Mar. 1421, 20 Mar. 1422.
2 {21 Mar. 1414, 20 Mar. 1415.	4 {21 Mar. 1416, 20 Mar. 1417.	6 {21 Mar. 1418, 20 Mar. 1419.	8 {21 Mar. 1420, 20 Mar. 1421.	10 {21 Mar. 1422, 31 Aug. 1422.

HENRY THE SIXTH.

1 { 1 Sept. 1422, 31 Aug. 1423.	9 { 1 Sept. 1430, 31 Aug. 1431.	17 { 1 Sept. 1438, 31 Aug. 1439.	25 { 1 Sept. 1446, 31 Aug. 1447.	33 { 1 Sept. 1454, 31 Aug. 1455.
2 { 1 Sept. 1423, 31 Aug. 1424.	10 { 1 Sept. 1431, 31 Aug. 1432.	18 { 1 Sept. 1439, 31 Aug. 1440.	26 { 1 Sept. 1447, 31 Aug. 1448.	34 { 1 Sept. 1455, 31 Aug. 1456.
3 { 1 Sept. 1424, 31 Aug. 1425.	11 { 1 Sept. 1432, 31 Aug. 1433.	19 { 1 Sept. 1440, 31 Aug. 1441.	27 { 1 Sept. 1448, 31 Aug. 1449.	35 { 1 Sept. 1456, 31 Aug. 1457.
4 { 1 Sept. 1425, 31 Aug. 1426.	12 { 1 Sept. 1433, 31 Aug. 1434.	20 { 1 Sept. 1441, 31 Aug. 1442.	28 { 1 Sept. 1449, 31 Aug. 1450.	36 { 1 Sept. 1457, 31 Aug. 1458.
5 { 1 Sept. 1426, 31 Aug. 1427.	13 { 1 Sept. 1434, 31 Aug. 1435.	21 { 1 Sept. 1442, 31 Aug. 1443.	29 { 1 Sept. 1450, 31 Aug. 1451.	37 { 1 Sept. 1458, 31 Aug. 1459.
6 { 1 Sept. 1427, 31 Aug. 1428.	14 { 1 Sept. 1435, 31 Aug. 1436.	22 { 1 Sept. 1443, 31 Aug. 1444.	30 { 1 Sept. 1451, 31 Aug. 1452.	38 { 1 Sept. 1459, 31 Aug. 1460.
7 { 1 Sept. 1428, 31 Aug. 1429.	15 { 1 Sept. 1436, 31 Aug. 1437.	23 { 1 Sept. 1444, 31 Aug. 1445.	31 { 1 Sept. 1452, 31 Aug. 1453.	39 { 1 Sept. 1460, 4 Mar. 1461.
8 { 1 Sept. 1429, 31 Aug. 1430.	16 { 1 Sept. 1437, 31 Aug. 1438.	24 { 1 Sept. 1445, 31 Aug. 1446.	32 { 1 Sept. 1453, 31 Aug. 1454.	

"ANNO AB INCHOATIONE REGNI NOSTRI," ET "READEPTIONIS NOSTRÆ REGIÆ POTESTATIS."*

49 {9 October 1470, About April 1471.} 1

* On the 4th of March, 1461, Henry was deposed by Edward IV., and the last instrument issued by him is dated on the 3rd of that month; but in October, 1470, he recovered possession of the Throne, and resumed the Regal title. The first instrument issued in the name of Henry VI., after his restoration, is dated 9th October, 1470, the *teste* to which, and to all other documents while Henry possessed the throne, is in these words:—"Teste meipso, apud Westmonasterium, nono die Octobris, anno ab inchoatione regni nostri quadragesimo nono, et readeptionis nostræ regiæ potestatis anno primo." The last instrument issued by Henry VI., in the "*Fœdera*" is dated on the 27th of March, 1471

EDWARD THE FOURTH.

1	4 Mar. 1461, 3 Mar. 1462.	6	4 Mar. 1466, 3 Mar. 1467.	11	4 Mar. 1471, 3 Mar. 1472.	16	4 Mar. 1476, 3 Mar. 1477.
2	4 Mar. 1462, 3 Mar. 1463.	7	4 Mar. 1467, 3 Mar. 1468.	12	4 Mar. 1472, 3 Mar. 1473.	17	4 Mar. 1477, 3 Mar. 1478.
3	4 Mar. 1463, 3 Mar. 1464.	8	4 Mar. 1468, 3 Mar. 1469.	13	4 Mar. 1473, 3 Mar. 1474.	18	4 Mar. 1478, 3 Mar. 1479.
4	4 Mar. 1464, 3 Mar. 1465.	9	4 Mar. 1469, 3 Mar. 1470.	14	4 Mar. 1474, 3 Mar. 1475.	19	4 Mar. 1479, 3 Mar. 1480.
5	4 Mar. 1465, 3 Mar. 1466.	10	4 Mar. 1470, 3 Mar. 1471.	15	4 Mar. 1475, 3 Mar. 1476.	20	4 Mar. 1480, 3 Mar. 1481.
						21	4 Mar. 1481, 3 Mar. 1482.
						22	4 Mar. 1482, 3 Mar. 1483.
						23	4 Mar. 1483, 9 Apr. 1483.

EDWARD THE FIFTH.

1	9 April 1483, 25 June 1483.

RICHARD THE THIRD.

1	26 June 1483, 25 June 1484.	2	26 June 1484, 25 June 1485.	3	26 June 1485, 22 Aug. 1485.

HENRY THE SEVENTH.

1	22 Aug. 1485, 21 Aug. 1486.	6	22 Aug. 1490, 21 Aug. 1491.	11	22 Aug. 1495, 21 Aug. 1496.	16	22 Aug. 1500, 21 Aug. 1501.	21	22 Aug. 1505, 21 Aug. 1506.
2	22 Aug. 1486, 21 Aug. 1487.	7	22 Aug. 1491, 21 Aug. 1492.	12	22 Aug. 1496, 21 Aug. 1497.	17	22 Aug. 1501, 21 Aug. 1502.	22	22 Aug. 1506, 21 Aug. 1507.
3	22 Aug. 1487, 21 Aug. 1488.	8	22 Aug. 1492, 21 Aug. 1493.	13	22 Aug. 1497, 21 Aug. 1498.	18	22 Aug. 1502, 21 Aug. 1503.	23	22 Aug. 1507, 21 Aug. 1508.
4	22 Aug. 1488, 21 Aug. 1489.	9	22 Aug. 1493, 21 Aug. 1494.	14	22 Aug. 1498, 21 Aug. 1499.	19	22 Aug. 1503, 21 Aug. 1504.	24	22 Aug. 1508, 21 Apr. 1509.
5	22 Aug. 1489, 21 Aug. 1490.	10	22 Aug. 1494, 21 Aug. 1495.	15	22 Aug. 1499, 21 Aug. 1500.	20	22 Aug. 1504, 21 Aug. 1505.		

HENRY THE EIGHTH.

1	22 Apr. 1509, 21 Apr. 1510.	9	22 Apr. 1517, 21 Apr. 1518.	17	22 Apr. 1525, 21 Apr. 1526.	25	22 Apr. 1533, 21 Apr. 1534.	33	22 Apr. 1541, 21 Apr. 1542.
2	22 Apr. 1510, 21 Apr. 1511.	10	22 Apr. 1518, 21 Apr. 1519.	18	22 Apr. 1526, 21 Apr. 1527.	26	22 Apr. 1534, 21 Apr. 1535.	34	22 Apr. 1542, 21 Apr. 1543.
3	22 Apr. 1511, 21 Apr. 1512.	11	22 Apr. 1519, 21 Apr. 1520.	19	22 Apr. 1527, 21 Apr. 1528.	27	22 Apr. 1535, 21 Apr. 1536.	35	22 Apr. 1543, 21 Apr. 1544.
4	22 Apr. 1512, 21 Apr. 1513.	12	22 Apr. 1520, 21 Apr. 1521.	20	22 Apr. 1528, 21 Apr. 1529.	28	22 Apr. 1536, 21 Apr. 1537.		
5	22 Apr. 1513, 21 Apr. 1514.	13	22 Apr. 1521, 21 Apr. 1522.	21	22 Apr. 1529, 21 Apr. 1530.	29	22 Apr. 1537, 21 Apr. 1538.	36	22 Apr. 1544, 21 Apr. 1545.
6	22 Apr. 1514, 21 Apr. 1515.	14	22 Apr. 1522, 21 Apr. 1523.	22	22 Apr. 1530, 21 Apr. 1531.	30	22 Apr. 1538, 21 Apr. 1539.		
7	22 Apr. 1515, 21 Apr. 1516.	15	22 Apr. 1523, 21 Apr. 1524.	23	22 Apr. 1531, 21 Apr. 1532.	31	22 Apr. 1539, 21 Apr. 1540.	37	22 Apr. 1545, 21 Apr. 1546.
8	22 Apr. 1516, 21 Apr. 1517.	16	22 Apr. 1524, 21 Apr. 1525.	24	22 Apr. 1532, 21 Apr. 1533.	32	22 Apr. 1540, 21 Apr. 1541.	38	22 Apr. 1546, 28 Jan. 1547.

GEORGE THE FIRST.

1	1 Aug. 1714, 31 July 1715.	4	1 Aug. 1717, 31 July 1718.	7	1 Aug. 1720, 31 July 1721.	10	1 Aug. 1723, 31 July 1724.	12	1 Aug. 1725, 31 July 1726.
2	1 Aug. 1715, 31 July 1716.	5	1 Aug. 1718, 31 July 1719.	8	1 Aug. 1721, 31 July 1722.	11	1 Aug. 1724, 31 July 1725.	13	1 Aug. 1726, 11 June 1727.
3	1 Aug. 1716, 31 July 1717.	6	1 Aug. 1719, 31 July 1720.	9	1 Aug. 1722, 31 July 1723.				

GEORGE THE SECOND.

1	11 June 1727, 10 June 1728.	8	11 June 1734, 10 June 1735.	15	11 June 1741, 10 June 1742.	22	11 June 1748, 10 June 1749.	29	11 June 1755, 10 June 1756.
2	11 June 1728, 10 June 1729.	9	11 June 1735, 10 June 1736.	16	11 June 1742, 10 June 1743.	23	11 June 1749, 10 June 1750.	30	11 June 1756, 10 June 1757.
3	11 June 1729, 10 June 1730.	10	11 June 1736, 10 June 1737.	17	11 June 1743, 10 June 1744.	24	11 June 1750, 10 June 1751.	31	11 June 1757, 10 June 1758.
4	11 June 1730, 10 June 1731.	11	11 June 1737, 10 June 1738.	18	11 June 1744, 10 June 1745.	25	11 June 1751, 10 June 1752.	32	11 June 1758, 10 June 1759.
5	11 June 1731, 10 June 1732.	12	11 June 1738, 10 June 1739.	19	11 June 1745, 10 June 1746.	26	11 June 1752, 10 June 1753.	33	11 June 1759, 10 June 1760.
6	11 June 1732, 10 June 1733.	13	11 June 1739, 10 June 1740.	20	11 June 1746, 10 June 1747.	27	11 June 1753, 10 June 1754.	34	11 June 1760, 25 Oct. 1760.
7	11 June 1733, 10 June 1734.	14	11 June 1740, 10 June 1741.	21	11 June 1747, 10 June 1748.	28	11 June 1754, 10 June 1755.		

GEORGE THE THIRD.

1	25 Oct. 1760, 24 Oct. 1761.	11	25 Oct. 1770, 24 Oct. 1771.	21	25 Oct. 1780, 24 Oct. 1781.	31	25 Oct. 1790, 24 Oct. 1791.	41	25 Oct. 1800, 24 Oct. 1801.
2	25 Oct. 1761, 24 Oct. 1762.	12	25 Oct. 1771, 24 Oct. 1772.	22	25 Oct. 1781, 24 Oct. 1782.	32	25 Oct. 1791, 24 Oct. 1792.	42	25 Oct. 1801, 24 Oct. 1802.
3	25 Oct. 1762, 24 Oct. 1763.	13	25 Oct. 1772, 24 Oct. 1773.	23	25 Oct. 1782, 24 Oct. 1783.	33	25 Oct. 1792, 24 Oct. 1793.	43	25 Oct. 1802, 24 Oct. 1803.
4	25 Oct. 1763, 24 Oct. 1764.	14	25 Oct. 1773, 24 Oct. 1774.	24	25 Oct. 1783, 24 Oct. 1784.	34	25 Oct. 1793, 24 Oct. 1794.	44	25 Oct. 1803, 24 Oct. 1804.
5	25 Oct. 1764, 24 Oct. 1765.	15	25 Oct. 1774, 24 Oct. 1775.	25	25 Oct. 1784, 24 Oct. 1785.	35	25 Oct. 1794, 24 Oct. 1795.	45	25 Oct. 1804, 24 Oct. 1805.
6	25 Oct. 1765, 24 Oct. 1766.	16	25 Oct. 1775, 24 Oct. 1776.	26	25 Oct. 1785, 24 Oct. 1786.	36	25 Oct. 1795, 24 Oct. 1796.	46	25 Oct. 1805, 24 Oct. 1806.
7	25 Oct. 1766, 24 Oct. 1767.	17	25 Oct. 1776, 24 Oct. 1777.	27	25 Oct. 1786, 24 Oct. 1787.	37	25 Oct. 1796, 24 Oct. 1797.	47	25 Oct. 1806, 24 Oct. 1807.
8	25 Oct. 1767, 24 Oct. 1768.	18	25 Oct. 1777, 24 Oct. 1778.	28	25 Oct. 1787, 24 Oct. 1788.	38	25 Oct. 1797, 24 Oct. 1798.	48	25 Oct. 1807, 24 Oct. 1808.
9	25 Oct. 1768, 24 Oct. 1769.	19	25 Oct. 1778, 24 Oct. 1779.	29	25 Oct. 1788, 24 Oct. 1789.	39	25 Oct. 1798, 24 Oct. 1799.	49	25 Oct. 1808, 24 Oct. 1809.
10	25 Oct. 1769, 24 Oct. 1770.	20	25 Oct. 1779, 24 Oct. 1780.	30	25 Oct. 1789, 24 Oct. 1790.	40	25 Oct. 1799, 24 Oct. 1800.	50	25 Oct. 1809, 24 Oct. 1810.

51	25 Oct. 1810, 5 Feb. 1811, 24 Oct. 1811.	53	25 Oct. 1812, 24 Oct. 1813.	56	25 Oct. 1815, 24 Oct. 1816.	59	25 Oct. 1818, 24 Oct. 1819.	REGENCY.	
52	25 Oct. 1811, 24 Oct. 1812.	54	25 Oct. 1813, 24 Oct. 1814.	57	25 Oct. 1816, 24 Oct. 1817.	60	25 Oct. 1819, 29 Jan. 1820.		
REGENCY.		55	25 Oct. 1814, 24 Oct. 1815.	REGENCY.		REGENCY.			
		REGENCY.		58	25 Oct. 1817, 24 Oct. 1818.				

that OLIVER CROMWELL assumed the title of "The Lord Protector of the Commonwealth of England, Scotland and Ireland," on the 16th of December, 1653, with the style of "His Highness." He died at Whitehall, on Friday the $\frac{3rd}{16th}$ of September, 1658; and his son, Richard Cromwell, was proclaimed Protector the next day, the $\frac{4th}{17th}$ of September, and resigned the office in May, 1659.

GEORGE THE FOURTH.

1 29 Jan. 1820, 28 Jan. 1821.	4 29 Jan. 1823, 28 Jan. 1824.	6 29 Jan. 1825, 28 Jan. 1826.	8 29 Jan. 1827, 28 Jan. 1828.	10 29 Jan. 1829, 28 Jan. 1830.
2 29 Jan. 1821, 28 Jan. 1822.	5 29 Jan. 1824, 28 Jan. 1825.	7 29 Jan. 1826, 28 Jan. 1827.	9 29 Jan. 1828, 28 Jan. 1829.	11 29 Jan. 1830, 26 June 1830.
3 29 Jan. 1822, 28 Jan. 1823.				

WILLIAM THE FOURTH.

1 26 June 1830, 25 June 1831.	3 26 June 1832, 25 June 1833.	5 26 June 1834, 25 June 1835.	7 26 June 1836, 20 June 1837.
2 26 June 1831, 25 June 1832.	4 26 June 1833, 25 June 1834.	6 26 June 1835, 25 June 1836.	

VICTORIA.

1 20 June 1837, 19 June 1838.	14 20 June 1850, 19 June 1851.	27 20 June 1863, 19 June 1864.	40 20 June 1876, 19 June 1877	53 20 June 1889, 19 June 1890.
2 20 June 1838, 19 June 1839.	15 20 June 1851, 19 June 1852.	28 20 June 1864, 19 June 1865.	41 20 June 1877, 19 June 1878.	54 20 June 1890, 19 June 1891.
3 20 June 1839, 19 June 1840.	16 20 June 1852, 19 June 1853.	29 20 June 1865, 19 June 1866.	42 20 June 1878, 19 June 1879.	55 20 June 1891, 19 June 1892.
4 20 June 1840, 19 June 1841.	17 20 June 1853, 19 June 1854.	30 20 June 1866, 19 June 1867.	43 20 June 1879, 19 June 1880.	56 20 June 1892, 19 June 1893.
5 20 June 1841, 19 June 1842.	18 20 June 1854, 19 June 1855.	31 20 June 1867, 19 June 1868.	44 20 June 1880, 19 June 1881.	57 20 June 1893, 19 June 1894.
6 20 June 1842, 19 June 1843.	19 20 June 1855, 19 June 1856.	32 20 June 1868, 19 June 1869.	45 20 June 1881, 19 June 1882.	58 20 June 1894, 19 June 1895.
7 20 June 1843, 19 June 1844.	20 20 June 1856, 19 June 1857.	33 20 June 1869, 19 June 1870.	46 20 June 1882, 19 June 1883.	59 20 June 1895, 19 June 1896.
8 20 June 1844, 19 June 1845.	21 20 June 1857, 19 June 1858.	34 20 June 1870, 19 June 1871.	47 20 June 1883, 19 June 1884.	60 20 June 1896, 19 June 1897.
9 20 June 1845, 19 June 1846.	22 20 June 1858, 19 June 1859.	35 20 June 1871, 19 June 1872.	48 20 June 1884, 19 June 1885.	61 20 June 1897, 19 June 1898.
10 20 June 1846, 19 June 1847.	23 20 June 1859, 19 June 1860.	36 20 June 1872, 19 June 1873.	49 20 June 1885, 19 June 1886.	62 20 June 1898, 19 June 1899.
11 20 June 1847, 19 June 1848.	24 20 June 1860, 19 June 1861.	37 20 June 1873, 19 June 1874.	50 20 June 1886, 19 June 1887.	63 20 June 1899, 19 June 1900.
12 20 June 1848, 19 June 1849.	25 20 June 1861, 19 June 1862.	38 20 June 1874, 19 June 1875.	51 20 June 1887, 19 June 1888.	64 20 June 1900, 22 Jan. 1901.
13 20 June 1849, 19 June 1850.	26 20 June 1862, 19 June 1863.	39 20 June 1875, 19 June 1876.	52 20 June 1888, 19 June 1889.	

EDWARD THE SEVENTH.

1 22 Jan. 1901, 21 Jan. 1902.	3 22 Jan. 1903, 21 Jan. 1904.	5 22 Jan. 1905, 21 Jan. 1906.	7 22 Jan. 1907, 21 Jan. 1908.	9 22 Jan. 1909, 21 Jan. 1910.
2 22 Jan. 1902, 21 Jan. 1903.	4 22 Jan. 1904, 21 Jan. 1905.	6 22 Jan. 1906, 21 Jan. 1907.	8 22 Jan. 1908, 21 Jan. 1909.	10 22 Jan. 1910, 6 May 1910.

GEORGE THE FIFTH.

1 6 May 1910, 5 May 1911.	4 6 May 1913, 5 May 1914.	7 6 May 1916, 5 May 1917.	10 6 May 1919, 5 May 1920.	12 6 May 1921, 5 May 1922.	
2 6 May 1911, 5 May 1912.	5 6 May 1914, 5 May 1915.	8 6 May 1917, 5 May 1918.	11 6 May 1920, 5 May 1921.	13 6 May 1922, 5 May 1923.	
3 6 May 1912, 5 May 1913.	6 6 May 1915, 5 May 1916.	9 6 May 1918, 5 May 1919.			

ABBREVIATIONS USED IN REFERENCE TO LAW REPORTS AND TEXT BOOKS.

THE DATES DENOTE THE PERIOD COVERED BY THE REPORTS.
Current Series are marked with an Asterisk (*).

A.	Adam's Justiciary Reports, Scotland. 7 vols. 1893-1916.
A. An. Anon	Anonymous.
A. B.	Anonymous Reports at the end of Bendloe. 1661.
Ab.	Abridgment.
Abeckett Res. Judg.	A'beckett's Reserved Judgments, Victoria. 1 vol. 1846-51.
Abr.	Abridgment.
Abr. Cas.	Crawford and Dix's Abridged Cases (Ireland). 1837-38.
Abr. Ca. Eq.	Abridgment of Cases in Equity.
Abs.	Absolute.
[1891] A. C.	Law Reports, Appeal Cases (1891 onwards).
Acc. or Ag. or Agr.	Accord or agrees.
Act.	Acton's Reports, Prize Cases. 1 vol. and vol. 2 part 1. 1809-11.
Act. Can.	Acta Cancellariæ, by Monro.
Act. Reg.	Acta Regia.
Act. Sed.	Act of Sederunt, Scotland.
Ad.	Addams' Ecclesiastical Reports. 2 vols. and vol. 3 part 1. 1822-26.
Ad. & E.	Adolphus and Ellis's Reports, K.B. 18 vols. 1841-52.
Adam.	Adam's Justiciary Court Reports, Scotland. 7 vols. 1893-1916.
Add. E. R.	Addam's Ecclesiastical Reports. 2 vols., vol. 3 part 1. 1822-26.
Adj.	Adjudged; Adjourned.
Adm.	Admiralty; Admitted.
Admon.	Administration.
Admr.	Administrator.
Admix.	Administratrix.
A. & E.	Adolphus and Ellis's Reports, Q.B. 12 vols. 1834-40.
A. & E. N. S.	Adolphus and Ellis's Q.B., New Series. 18 vols. 1841-52.
A.G.	Attorney-General.
Agr.	Agree; Agreement.
A. & H.	Arnold and Hodges' Q. B. Reports. Parts 1-5. 1840 41.
A. J. R.	Australian Jurist Reports. 5 vols. 1870-74.
A. L. R.	Argus Law Reports, Victoria. 1895.*
A. L. T.	Australian Law Times, 1879.*
Al.	Aleyn's Reports, K.B. 1646-48.
Al. & Nap.	Alcock and Napier's K.B. Reports, Ireland. 1831 33.
Alc. Reg. C.	Alcock's Registry Cases, Ireland. 1832-41.
Aleyn	Aleyn's K.B. Reports. 1646-48.
All. N. B.	Allen's Reports, New Brunswick. 6 vols. 1848-66.
Amb.	Ambler's Reports, Chancery. 2 vols. 1737-84.
A. M. & O.	Armstrong, Macartney, and Ogle's Irish Nisi Prius Reports 1840-42.
A. Moo.	A. Moore's Reports in Bosanquet and Puller.
A. & N.	Alcock and Napier's K.B. Reports, Ireland. 1831-33.
And.	Anderson's Reports, C. P. 2 vols. in 1. 1534-1605. Andrews' Reports, K.B. 1737-38.

And. Agr. Dec.	Anderson's Agricultural Decisions, Scotland. 1800-83.
Andr.	Andrews' Reports, K.B. 1737-38.
Annaly	Reports, time Hardwicke, K.B. 1733-38.
Anon.	Anonymous.
Anst.	Anstruther's Reports, Exch. 3 vols. 1792-97.
A. P. B. Ashurst, MSS. L. I. L.	Ashurst, J., Paper Book; MS. in Lincoln's Inn Library.
App. Cas.	Law Reports Appeal Cases. 1875-90.
App. R. N. Z.	Appeal Reports, New Zealand; Johnston. 3 vols. 1867-77.
App. Rep.	Appeal Reports, Ontario. 27 vols. 1876-1900.
A. R.	Anno Regni, Argus Law Reports, Victoria. 1895.* Industrial Arbitration Reports, N.S. Wales. 1902.*
Arch. L. R.	Architects Law Reports. 4 vols. 1904-9.
Arch. P. L. Cas.	Archbold's Poor Law Cases. 1842-58.
Arg. L. R.	Argus Law Reports, Melbourne. 1895.*
Arkley	Arkley's Justiciary Reports, Scotland. 1846-48.
Arms M. & O.	Armstrong, Macartney, and Ogle's Reports, N. P., Ireland 1840-42.
Arn.	Arnold's Reports, C. P. Vols. 1 & 2, part 1. 1838-39. Arnot's Scottish Criminal Trials.
Arn. & H.	Arnold and Hodges' Practice Cases, Q.B. Parts 1-5. 1840-41.
Arn. Ins.	Arnould's Marine Insurance.
A. S.	Act of Sederunt, Scotland.
Ashe	Ashe's Tables.
Asp.	Aspinall's Maritime Cases. 1870.*
Ass.	Book of Assizes (Assisarum Liber).
Ast. Ent.	Aston's Entries.
Atk.	Atkyns' Reports, Chancery. 3 vols. 1736-54.
Att.-Gen.	Attorney-General.
Aust.	Austin's County Court Cases. 1867-69
Aust. Jur.	Australian Jurist. 5 vols. 1870-74.
Aust. Jur. Rep.	Australian Jurist Reports. 5 vols. 1870-74
Aust. L. T.	Australian Law Times. 1879.*
Auth.	Authentica.
Ayl. Par.	Ayliffe's Parergon Juris.
B.	Back of a leaf.
B. & A.	Barnewall and Alderson's Reports, K.B. 5 vols. 1817-22. Barron and Arnold's Election Cases, 1843-46. Barron and Austin's Election Cases. 1842
B. & Ad.	Barnewall and Adolphus's Reports, K.B. 5 vols. 1830-34
B. & B.	Broderip and Bingham's Reports, C.P. 3 vols. 1819-22. Ball and Beatty's Chancery Reports, Ireland 2 vols. 1807-14.
B. & C.	Barnewall and Cresswell's Reports, K.B. 10 vols. 1822-30
B. & C. R.	Bankruptcy and Company Winding-up Reports. 1918.*
B. & F.	Broderick and Fremantle's Ecclesiastical Cases. 1840-64.
B. & I.	Bankruptcy and Insolvency Cases. 2 vols. 1853-55.
B. & S.	Best and Smith's Reports, Q.B. 10 vols. 1861-70.
B. or C. B.	Common Bench.
B. C.	Bail Court. Bankruptcy Cases British Columbia Law Reports. 1867.* New South Wales Bankruptcy Cases. 9 vols. 1890-99
B. C. C.	Bail Court Cases, Lowndes and Maxwell. 1852-54. Brown's Chancery Cases. 4 vols. 1778-94.
B. C. R.	Bail Court Reports, Saunders and Cole. 2 vols. 1846-47. *Or* Lowndes and Maxwell. 1852-54.
B. D. & O.	Blackham, Dundas and Osborne, N. P., Ireland. 1846-48.
B. E.	Baron of the Exchequer.
B. & L.	Browning and Lushington's Admiralty Reports. 1864-65. Bullen and Leake on Pleading.
B. L. R.	Bengal Law Reports. 15 vols. 1868-75.
B. M.	Burrow's Reports, temp. Mansfield. 5 vols. 1757-71.
B. N. C.	Brooke's New Cases, K. B. 1515-58. Bingham's New Cases, C. P. 6 vols. 1834-40.

B. N. P.	Buller's Nisi Prius.
B. P. B.	Paper Book of Buller in Lincoln's Inn Library.
B. P. C.	Brown's Parliamentary Cases. 8 vols. 1701-1800.
B. & P.	Bosanquet and Puller's Reports, C. B. 3 vols. 1796-1804.
B. & P. N. R.	Bosanquet and Puller's New Reports, C. P. 2 vols. 1804-7.
B. P. L.	Bott's Poor Law Cases. 3 vols. 1560-1833.
B. R.	King's Bench ; Bankruptcy Reports.
B. R. H.	Cases temp. Hardwicke, K.B. 1733-38.
B. Tr.	Bishop's Trial.
Bac. Abr.	Bacon's Abridgment.
Bail. Ct. Cas.	Bail Court Cases, Lowndes and Maxwell. 1852-54.
Bail. Ct. R.	Bail Court Reports, Saunders and Cole. 2 vols. 1846-48.
Ball & B.	Ball and Beatty's Reports, Chancery, Ireland. 2 vols. 1807-14.
Banc. Sup.	Upper Bench.
Bank. & Insol. Rep.	Bankruptcy and Insolvency Reports (Dasent). 2 vols. 1853-55.
Bar. & Arn.	Barron and Arnold's Election Cases. 1843-46.
Bar. & Aust	Barron and Austin's Election Cases. 1842.
Barn. & Ald.	Barnewall and Alderson's Reports, K. B. 5 vols. 1817-22.
Barn. & Adol.	Barnewall and Adolphus's Reports, K. B. 5 vols. 1830-34
Barn. & Cress.	Barnewall and Cresswell's Reports, K. B. 10 vols. 1822-30.
Barn. K. B.	Barnardiston's Reports, K. B. 2 vols. 1726-34
Barn. C.	Barnardiston's Reports, Chancery. 1740-41.
Barnes	Barnes's Notes, C. P. 1732-60.
Batt.	Batty's Reports, K. B., Ireland. 1825-26.
Beat.	Beatty's Chancery Reports, Ireland. 1814-30.
Beav.	Beavan's Reports, Rolls Court. 36 vols. 1838-66.
Beav. & Wal.	Beaven and Walford's Railway Cases. 2 parts. 1846.
Beaw. Lex Merc.	Beawes Lex Mercatoria.
Bel.	Bellewe's Reports, K.B. 1378-1400.
Bell. App.	Bell's Cases on Appeal from Scotland. 7 vols. 1842-50.
Bell C. (folio and 8vo.)	Bell (R.), Cases, Court of Session. 2 vols. 1790-95.
Bell C. C.	Bell's Crown Cases. 1858-60.
Bell. Cas. t. H. VIII.	Brooke's New Cases. 1515-58.
Bell. Cas. t. R. II.	Bellewe's K. B. Reports. 1378-1400.
Bell Dict. Dec.	Bell's Dictionary of Decisions, Scotland. 2 vols. 1808-33.
Bell folio	Bell's Court of Session Cases (folio). 1794-95.
Bell H. L.	Bell's House of Lords Cases. 7 vols. 1842-50.
Belt Bro.	Brown's Chancery Cases by Belt. 4 vols. 1778-94.
Belt Supp.	Belt's Supplement to Vesey, Sen. 1746-56.
Benne	Modern Reports, vol. 7.
Benl. or Bendl.	Benloe or Bendloe's Reports, K. B. 1531-1628.
Benl. & Dal.	Benloe and Dalison's Reports, C. P. 1358-1579.
Ber.	Berton's Reports, New Brunswick. 1835-39.
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Drew. & Sm.	Drewry and Smale's Vice Chancellors' Reports. 2 vols. 1860-65.
Drink.	Drinkwater's Common Pleas Reports. 1840-41.
Dru. t. Sugden	Drury's Irish Chancery Reports temp. Sugden. 1843-44.
Dru. t. Nap.	Drury's Irish Chancery Reports temp. Napier. 1850-59.
Dru. & Wal.	Drury and Walsh's Irish Chancery Reports. 2 vols. 1837-40.
Dru. & War.	Drury and Warren's Irish Chancery Reports. 4 vols. 1841-43.
Dugd. Mon.	Dugdale's Monasticon.
Dugd. Orig.	Dugdale's Origines Juridiciales.
Duke Ch. Us.	Duke on Charitable Uses.
Dunc. Ent. Cas.	Duncan's Scotch Entail Cases.
Dunc. Mer. Cas.	Duncan's Mercantile Cases.
Dund. L. C.	Dundee Law Chronicle. 3 vols. 1856-58.
Dunlop	Dunlop's Reports, Scotch Session Cases (Second Series). 24 vols. 1838-62.
Durie	Durie's Scottish Court of Session Cases. 1621 42.
Durn. & E.	Durnford and East's (Term Reports), K.B. 8 vols. 1785-1800.
Dy.	Dyer's King's Bench Reports. 3 vols. 1513-1582.
E.	East's Reports. 16 vols. 1801-1812.
E. B. & E.	Ellis, Blackburn and Ellis' Queen's Bench Reports. 1858.
E. P. C.	East's Pleas of the Crown.

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Eden	Eden's Chancery Reports. 2 vols. 1757-66.
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Edw. Abr.	Edwards' Abridgment of Prerogative Court Cases.
Edw. Adm.	Edwards' Admiralty Reports, 1808-12.
Edw. Pr. Cas.	Edwards' Admiralty Reports, 1808-12.
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Mar. L. C. N. S.	Maritime Law Cases, New Series (Aspinall). 1870.*
Mar. N. & Q.	Maritime Notes and Queries. 14 vols. 1873-1900.
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Mayn.	Maynard's Reports, Edward II. (Year Books, Part I.).
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McL. & R.	McLean and Robinson's Appeal Cases. 1839.
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	Modern Reports. 12 vols. 1669-1732.
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Mod.	Modern Reports. 12 vols. 1669-1732.
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W. & S.	Wilson and Shaw's Scotch Appeal Cases. 7 vols. 1825-35.
W. & T. L. C.	White and Tudor's Leading Cases in Equity.
W. & W.	Wyatt and Webb's Victorian Reports. 2 vols. 1861-63.
W. W. & A'B.	Wyatt, Webb and A'Beckett's Victorian Reports. 6 vols. 1863-69.
Wal. by L.	Wallis' Irish Reports, by Lyne. 1766-91.
Wall.	Wallis' Irish Chancery Reports. 1766-91.
Watermeyer	Watermeyer's Cape of Good Hope Reports. 1857.
Web. Pat. Cas.	Webster's Patent Cases. 2 vols. 1601-1855.
Week. No.	Weekly Notes. 1866.*
Week. Reptr.	Weekly Reporter. 54 vols. 1853-1906.
Welsb. H. & G.	Welsby, Hurlstone and Gordon Exchequer Reports. 11 vols 1848-56.
Welsh	Welsh's Registry Cases, Ireland. 1830-40.
West	West's Reports, House of Lords. 1839-41. West's Chancery Reports. 1736-39. Western Tithe Cases. 1592-1822.
West t. Hard.	West's Chancery Reports temp. Hardwicke. 1736-39.
West. L. R.	Western Law Reporter, Canada. 1905.*
West. L. T.	Western Law Times, Canada. 6 vols. 1890-95.
Wh. & T. L. C.	White and Tudor's Leading Cases in Equity.
White	White's Justiciary Cases, Scotland. 3 vols. 1886-93.
Wight El. Cas.	Wight's Scotch Election Cases. 2 vols. 1687-1803.
Wight.	Wightwick's Exchequer Reports. 1810-11.
Will.	Willes' Common Pleas Reports. 1737-60.
Will. Saund.	Williams' Notes to Saunders' Reports.
Will. Woll. & D.	Willmore, Wollaston and Davison's Q. B. Reports. 1837.
Will. Woll. & H.	Willmore, Wollaston and Hodges' Q. B. Reports. 2 vols. 1838.
Willes	Willes' Common Pleas Reports. 1737-60.
Williams P.	Peere Williams' Chancery Reports. 3 vols. 1695-1736.
Wilm.	Wilmot's Notes and Opinions. K. B. 1757-70.
Wils. Ch.	Wilson's Chancery Reports. 1818-19.
Wils. Exch.	Wilson's Exchequer Reports. 1805-17.
Wils. K. B.	Wilson's King's Bench Reports. 3 vols. 1742-74.
Wils. & Sh.	Wilson and Shaw's Scottish Appeal Cases. 7 vols. 1825-35.
Win.	Winch's Common Pleas Reports. 1621-25.
Wm. Bl.	William Blackstone's King's Bench Reports. 2 vols. 1746-80.
Wm. Rob.	William Robinson's Admiralty Reports. 3 vols. 1838-52.
Wms. Peere	Peere Williams' Chancery Reports. 3 vols. 1695-1736.
Wms. Saun.	Williams' Notes to Saunders' Reports.
Wol.	Wollaston's Bail Court Reports. 1840-41.
Wolf. & B.	Wolferstan and Bristow's Election Cases. 1859-65.
Wolf. & D.	Wolferstan and Dew's Election Cases. 1856-58.
Woll.	Wollaston's Bail Court Reports. 1840 41.
Wood	Wood's Tithe Cases. 4 vols. 1650-1798.
Wyatt Pr. R.	Wyatt's Practical Register in Chancery. 1 vol.
Wyatt, W. & A'B.	Wyatt, Webb and A'Beckett's Reports, Victoria. 6 vols. 1863-69.
Wyatt & Webb	Wyatt and Webb's Reports, Victoria. 2 vols. 1861-63.

† Y. B. . . . . Year Books.

† The Year Books are usually referred to by the year of each King's reign, the initial letter of his name, and the folio and number of the *placita*, *e.g.*, 34 H. VI. 25. 3. The initial letter of the name of the term in which the case was decided is sometimes prefixed, *e.g.*, H. 34 H. VI. 25. 3.

Y. & C.	Younge and Collyer's Chancery. 2 vols. 1841-43. *Or* Exchequer Equity Reports. 4 vols. 1834-42.
Y. & J.	Younge and Jervis' Exchequer Reports. 3 vols. 1826-30.
Yel.	Yelverton's King's Bench Reports. 1603-13.
You.	Younge's Exchequer Equity Reports. 1830-32.
You. & Coll. Ch.	Younge and Collyer's Chancery Reports. 2 vols. 1841-43.
You. & Coll. Ex.	Young and Collyer's Exchequer Equity Reports. 4 vols. 1834-42.
Young Adm.	Young's Nova Scotia Admiralty Cases. 1865-80.

ADDENDA ET CORRIGENDA.

Page 162, col. 2, line 16.—*For* "1753" *read* "1733."

Page 218, col. 1, line 27.—*For* "33" *read* "633."

Page 146, col. 1. *Continue* the first paragraph of the title HIGHNESS as follows: "But, except as regards titles borne before 11th December, 1917, it is provided by Letters Patent of that date that the children of any sovereign, and the children of the sons of any sovereign, and the eldest living son of the eldest son of any Prince of Wales, shall bear the titles of Royal Highness and of Prince or Princess, and that no other descendant of any sovereign shall bear the titles of Highness (with or without any prefix) or of Prince or Princess."

Page 178, col. 1, line 36. *Delete* the words ", and see ACCOUNT."

Page 524, col. 1, line 4.—After the word "payable," *insert* the words "by class 1 of the above-mentioned persons"

LAW DICTIONARY.

A 1—ABA

A 1, used, but without statutory sanction, in Lloyd's Register (see LLOYD'S) of shipping to indicate that a vessel has been built to Lloyd's highest class. The period for which the symbols A 1 are applicable is indicated by a prefixed number. Thus a vessel classed 18 A 1 will be allowed to remain in the A 1 class for eighteen years without re-survey.

A.B. See ABLE-BODIED SEAMAN.

A and B lists. When a limited company is wound up, all present members are liable, in so far as their shares are unpaid, to contribute towards the discharge of the liabilities of the company (Companies (Consolidation) Act, 1908, s. 123). Such members form the A list. If their contributions are insufficient, then all who have been members within one year before the date of the winding-up order may be required to contribute to such extent as their shares were unpaid (*ib.*). Such past members form the B list. Members include not merely actual shareholders but also others, as to whom see s. 24. The A list is made out as soon as may be after the winding-up order (see s. 163 (1)), but the B list is not made out until it has been shown that the liabilities cannot be discharged by the A list. See CALL; CONTRIBUTORY.

Ab abusu ad usum non valet consequentia. From the abuse of a thing you can draw no conclusion as to its legitimate use. The maxim is cited at 1 *A. & E.* 116.

Abactor, one who stole and drove away cattle in herds, not merely one by one.

Abandonment of Action. This can now be effected only by serving before trial a notice of discontinuance under Ord. XXVI., or by allowing at trial a verdict or judgment for the defendant to be recorded.

Abandonment of Canal. An unnecessary or derelict canal may be abandoned under a warrant issued by the Board of Trade pursuant to the Railway and Canal Traffic Act, 1888, s. 45.

Abandonment of Cargo; Claim; Ship. In marine insurance "there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable or because it could not be preserved from actual total loss without an expenditure which would exceed its total value when the expenditure had been incurred" (Marine Insurance Act, 1906, s. 60). "When there is a constructive total loss the insured may . . . abandon the subject-matter insured to the insurer" (*ib.*, s. 61) by giving notice of abandonment to the insurer in any way which clearly indicates his intention within a reasonable time (s. 62), and thereupon the insurer is entitled to take over the interest of the insured in whatever may remain of the subject-matter insured (s. 63).

Abandonment of Domicile. See DOMICILE.

Abandonment of Railway. In the case of any railway company authorised before 1867, the making or carrying on of the whole or any part of its undertaking may be abandoned under a warrant of the Board of Trade issued pursuant to the provisions of the Abandonment of Railways Act, 1850, as amended and extended by the Railway Companies Act, 1867, ss. 32-35; but in the case of any railway company authorised after 1867, parliamentary powers are necessary for any abandonment.

Abandum, anciently this meant anything abandoned, sequestrated, or proscribed.

Ab antiquo, from old times.

Abatement. This expression, according to the context, means either termination or reduction.

Abatement of Annuities. See ANNUITIES.

Abatement of Civil Proceedings. Formerly almost every change of interest after the commencement and before the termination of proceedings caused an abatement or termination, which, however, was curable, where the right of action survived, by REVIVOR, SCIRE

FACIAS, or SUGGESTION (q.v.); but now Ord. XVII., r. 1, provides that "a cause or matter shall not be abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*; and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death."

Abatement of Criminal Proceedings. Criminal proceedings are not abated, that is to say, are not terminated, either by the death of the prosecutor, who in theory acts for the Crown, or by the death of the Sovereign (see DEMISE OF THE CROWN). Any warrant or summons remains in force notwithstanding the death of the judge or justice who issued it or his ceasing to hold his office; but this rule does not apply to any summons or warrant issued by a justice in Ireland

Abatement of False Lights. Under the Merchant Shipping Act, 1894, s. 667, if the general lighthouse authority, which (*ib.*, s. 634) in England is the Trinity House, serves notice requiring that any light liable to be mistaken for the light from a lighthouse shall be screened or extinguished, then, if, within seven days, such notice be not complied with the authority may enter and extinguish the light at the expense of the person served with the notice, and recover from him the expense of so doing, and he is liable to a penalty not exceeding £100.

Abatement of Freehold. In the law of real property, where one died seised of land and a stranger entered upon the land before the entry of the heir, such entry was known as abatement, and the person so entering was known as an abator. The heir could, of course, recover the land from the abator by action. Intrusion, it should be noted, was where a stranger entered to the prejudice of the reversioner or remainderman, while disseisin was to forcibly or fraudulently put out of possession a person seised of the freehold.

Abatement of Legacies. This takes place when legatees receive none or only a part of their legacies, although what was devised to them remains and had not been adeemed (see ADEMPTION) before the testator's death.

As to the division of legacies into general, specific, and demonstrative, see LEGACIES.

If the assets are insufficient, general legacies, other than those given in payment of a debt due to the legatee or in consideration of the legatee abandoning any right or interest, abate proportionately between themselves, unless the intention is clear that any particular legacy shall be paid in full; but this rule does not operate in favour of a residuary legatee, even though no residue will be left after payment of the other general legatees.

Specific legacies take priority of general legacies, and are liable to abatement only if the assets are insufficient for the payment of debts.

Demonstrative legacies are not subject to abatement (unless the assets are insufficient for the payment of debts) until the fund out of which payment is directed becomes exhausted, in which case they are liable to abatement in common with general legacies as regards so much as is payable out of the assets other than such fund.

If a testator, whose estate consisted both of pure and impure personalty, gave a legacy to a charity without directing it to be paid out of his pure personalty, the legacy had to abate in the proportion which the impure personalty bore to the whole residuary personal estate (thus, whole estate, £1,500; pure personalty, £1,000; amount of legacy, £300; amount payable to charity, £200), because the charity could not participate in the impure personalty, owing to the provisions of the Charitable Uses and Mortmain Act, 1888, and of the earlier enactments replaced by that Act; but now, under the Mortmain and Charitable Uses Act, 1891, the charity can participate in the impure personalty, and no abatement occurs. See MORTMAIN.

Abatement of Nuisance. To abate a nuisance is to remove or put an end to it. Nuisances are divided into public nuisances and private nuisances, as to which see NUISANCES. A public nuisance may be abated by anyone to whom it does a special injury, but only to the extent necessary to prevent such injury. Thus, anyone may remove an obstacle placed on a public highway, if such removal is necessary to enable him to pass along the highway. A private nuisance may be abated by anyone aggrieved. If, for instance, A builds on his land a wall which stops ancient lights on adjoining land, the owner of the adjoining land may enter on A's land and pull the wall down. But this must be done without committing a breach of the peace, and without doing more damage than is unavoidable.

Abatement of Purchase Money. This takes place where, a vendor, having misdescribed property which he has contracted to convey,

the agreed purchase money is reduced by way of compensation for the part of the property which the vendor is unable to convey. Thus, where a vendor agreed to sell 186 acres as freehold, but two acres were in fact held only from year to year, specific performance (see SPECIFIC PERFORMANCE) of the contract, in so far as it could be carried out, with compensation, was ordered.

Abatement, Pleas in. Such pleas showed that in criminal proceedings the prosecutor, or in civil proceedings the plaintiff, had committed some informality which prevented him from succeeding. They have for long been obsolete as regards criminal proceedings, and they were abolished as regards civil proceedings by Ord. XXI., r. 20.

Abator, one who effected an abatement (q.v.). See ABATEMENT OF FREEHOLD.

Abbreviatio Placitorum, a collection of cases decided in the superior Courts from the reign of Richard I. down to the commencement of the Year Books (q.v.). It was compiled early in the seventeenth century from the Rolls, or records of the proceedings of the Courts, and was printed in 1811 by the Record Commission, with an introduction, in which it is attributed to Arthur Agarde, Deputy Chamberlain of the Exchequer, and other keepers of the records.

Abbrochement, buying up food or other wares so as to commit the offence of engrossing, forestalling, or regrating. See those titles.

Abdication. Notwithstanding the cases of (1) Edward II., who assented to the succession, in his lifetime, of his son Edward III.: (2) of Richard II., who executed a deed of resignation, whereupon Henry of Lancaster claimed the Crown and was accepted as King by the Houses of Parliament; and (3) of James II., upon whose flight it was declared by the Bill of Rights (1 Will. & M. sess. 2, c. 2) that he had abdicated the government and that the throne was thereby vacated, it would appear that at present the abdication of the Sovereign can be effected only by Act of Parliament.

Abduction. Apart from certain obsolete enactments (see, for instance, the Statute of Westminster II., 13 Edw. 1, c. 34), the abduction or carrying away of women or girls is now punishable only under the Offences against the Person Act, 1861, and the Criminal Law Amendment Act, 1885.

It is felony:—

(1) Where any person from motives of lucre takes away or detains against her will any woman of any age who has any interest in any property, or even any presumptive expectation of property as heiress or next-of-kin, with intent to marry or carnally know her, or to cause her to be married or carnally known (Act of 1861, s. 53).

(2) Where any person, with like intent, fraudulently allures, takes away, or detains any woman under twenty-one, similarly entitled to property, out of the possession and against the will of her parent or other lawful custodian (*ib.*).

(3) Where any person, with like intent, by force takes away or detains against her will any woman of any age (Act of 1861, s. 54).

Any person convicted of offence (1) or (2) is incapable of taking any interest in the property of the woman, whose property, if there has been a marriage with the convict, will be settled by the Court of Chancery (Act of 1861, s. 53).

It is a misdemeanour:—

Where any unmarried girl under sixteen is unlawfully taken out of the custody of her parent or lawful custodian against the will of such parent or custodian (Act of 1861, s. 55).

Where any unmarried girl under eighteen is taken as last above mentioned with intent that she shall be unlawfully and carnally known (Act of 1885, s. 7).

It is a felony unlawfully by force or fraud [practised either on the child or any other person] to lead or take away or decoy or entice away or detain any child under the age of fourteen with intent to deprive the parent or other lawful custodian of the possession of the child, or to steal any article belonging to such parent or guardian which is in or upon the person of the child, or with like intent to receive or harbour such child with knowledge that it has been so led or taken away or decoyed or enticed away or detained (Offences against the Person Act, 1861, s. 56). This offence is sometimes described as abduction. The term is also sometimes applied to the common law misdemeanour of forcibly stealing or carrying away any person of either sex or of any age, more properly described as assault and false imprisonment, which, when there is a removal beyond seas, comes within the Habeas Corpus Act, 1679, s. 11; and the term is also sometimes used to describe the statutory misdemeanour committed by anyone who by abduction or duress interferes with the free exercise by a voter of his franchise at any parliamentary or municipal or local government election.

The removal of a ward of Court out of the jurisdiction of the Court—sometimes described as abduction—is a contempt of Court punishable by committal. See CONTEMPT OF COURT.

Abearance, behaviour. Formerly a recognisance to be of good abearance meant the same thing as a recognisance to be of good behaviour.

Aberdeen Act, the popular title for the Entail Provisions Act, 1824, which was passed in order "to authorise the proprietors of entailed estates in Scotland to grant provisions to [i.e., to provide thereout for] the wives or husbands and children of such proprietors."

Aberemurdrum. In the laws of Canute and of Henry I. this meant wilful murder, as distinguished from manslaughter and chance-medley. See those titles.

Abettors, Abet. See ACCESSORIES; PRINCIPALS IN THE SECOND DEGREE.

Abeyance. This term denotes the condition of an inheritance which has no present owner. It is now used chiefly in connection with peerages (see PEERAGE); but it is also used in the law of real property, as regards which there are abeyance of the fee simple and abeyance of the freehold. Thus, the fee simple of the glebe of a church is in perpetual abeyance, for it is not in the patron, in the ordinary, or in the incumbent, although the freehold is in the incumbent. But again, the freehold of the glebe is in abeyance after the death of one incumbent and until another incumbent takes possession; and again, where A, being seised in fee of lands, makes a lease to B for life, with remainder to the heir of B, the fee simple is in abeyance during the life of B.

Abigevus, the same as abactor (q.v.).

Ab initio. When an authority or licence is given to anyone by the law, and he abuses it, he becomes a trespasser *ab initio*, that is to say, from the beginning, and everything done by him in purported exercise of such authority or licence becomes wrongful; but where the authority or licence is given otherwise than by the law, and is abused by the person to whom it is given, then such person is not a trespasser *ab initio* and is liable only for the abuse (see the *Six Carpenters' Case* (1611)). This rule of the common law was formerly of importance as determining the cause of action, but since the Judicature Acts it affects only the question of the measure of damages; and the Distress for Rent Act, 1737, s. 19, provides that in respect of any wrongful act done in levying a distress for rent justly due the person aggrieved can recover only for the special damage sustained by him.

Abishering; Abishersing. According to Spelman, these words are errors for *mishering, mishersing*, which themselves were legal terms of which lawyers did not know the meaning.

Abjuration. At common law this was an oath to leave the realm for ever, taken by a person who had claimed sanctuary (see SANCTUARY). Sanctuary was abolished by the statute 21 Jac. 1, c. 28, s. 7, and this oath thereupon ceased to be used.

Abjuration was one of the penalties imposed on Popish Recusants (q.v.) by the statutes 35 Eliz. c. 2, and 3 Jac. 1, c. 4.

By the statute 13 & 14 Will. 3, c. 16, it was provided that to every person entering any public office there should be tendered an oath, known as the oath of abjuration, to the effect that he renounced the title of the pretended Prince of Wales (the son of James II.) to the English throne. This enactment is repealed.

Abjuratio et Juramentum Latronum. (The abjuration and oath of thieves.) The form of oath which a thief or other felon had to take when he had fled into sanctuary and proposed to escape punishment by abjuring the realm. It is printed in the *Statutes of the Realm*, Vol. I., p. 250, among the "Statutes of Uncertain Date," but not in the "Statutes at Large."

Able-bodied Seaman. A seaman is entitled to be rated A.B., that is to say, as an able-bodied seaman, when he has served at sea three years before the mast; but service in a decked fishing vessel counts only to the extent of two years, and, in addition to such service, there must be at least one year of service in a trading vessel (Merchant Shipping Act, 1894, s. 60; Merchant Shipping Act, 1906, s. 58). See also SEAMAN.

Ablution. In ecclesiastical law this is the ceremonial cleaning, after the Communion Service, of the chalice and paten, by pouring into them, and then drinking, wine and water so as to consume what remains of the consecrated elements. It is not illegal when done after the Benediction; but it is illegal if done before the Benediction or, at any time, with prayers and gestures.

Abode. There is no strict or definite rule as to what is a man's abode, that is to say, his habitation or place of residence. It is a question rather of fact than of law. A man's house or other residence in which he lives with his family and sleeps at night is always his place of abode. But, apart from that, the test is whether there has been such a degree of inhabitancy as to constitute residence in the ordinary sense of the word. Thus, where a

man has a town house and a country house, it is entirely a question of fact, depending on the use made of them, whether he has two places of abode or only one.

The word "abode" is, however, sometimes capable of being used in a sense contrary to its ordinary meaning. Thus, in 1835 it was held that where a solicitor was required to give his "place of abode" in a notice of action he could give his place of business, though he certainly did not reside there. And under s. 150 of the Public Health Act, 1848, a notice which had to be served at "the owner's or occupier's place of abode" was held to have been well served by service at his place of business though he did not reside there.

Abolition. Anciently, this meant leave given by the Crown or the Court to abandon criminal proceedings.

Abominable Crime. This is the term used in the Offences against the Person Act, 1861, s. 61, to describe the crimes of sodomy and bestiality, both of which are felonies. Any attempt to commit either of these crimes is a misdemeanour (*ib.*, s. 62). Solicitation or incitement to commit either of these crimes is an indictable misdemeanour at common law. A wife may obtain a divorce from a husband guilty of either crime (Matrimonial Causes Act, 1857, s. 27). As to accusing or threatening to accuse, for purposes of blackmail, any person of such offences, see INFAMOUS CRIME and MENACES.

Abortion. In law, this means the confinement of a pregnant woman at anything short of the full term, that is to say, her miscarriage. To procure abortion is unlawful, unless it is done in good faith in order to save the life of the woman.

It is a felony where any pregnant woman unlawfully administers to herself any noxious thing or uses any other means with intent to procure her own miscarriage; or where any person unlawfully administers to or causes to be taken by any woman, whether pregnant or not, any noxious thing with intent to procure her miscarriage or uses any instrument or other means with like intent. It is a misdemeanour where any person supplies or procures any noxious thing, or any instrument or thing, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of any woman, whether pregnant or not.

About. See MORE OR LESS.

Abridge. In the old common law system of pleading, to abridge meant to make a declaration or count shorter by severing some of the substance of it.

Abridgment. A *bona fide* abridgment, involving intellectual labour and judgment so as to produce substantial condensation, has been held not to amount to infringement of a copyright book, other than a novel, with regard to which it has been held that such abridgment is an infringement. But the decisions to this effect were all given prior to the Copyright Act, 1911, s. 2 of which enumerates the acts which do not constitute an infringement; and the making of an abridgment is not included amongst those acts.

Abridgments (of the Laws of England). The term "abridgment" was used by early writers of eminence to describe digests of the laws of England. Such digests were later described sometimes as abridgments and sometimes as digests. Those of most authority are:—

Statham's *Abridgment*, published in the reign of Edward IV. It contains cases from the Year Books and other authorities down to 1461, arranged according to subjects. It was the first printed English law book. An English translation was published in 1916.

Fitzherbert's *Grand Abridgment*, first published in 1514, and containing a digest of the Year Books down to 1506, together with some cases from Bracton's *Note Book*. The best edition is that of 1565, in 2 vols., folio.

Brooke's *Grand Abridgment*, first published in 1568, founded on *Fitzherbert*, and, like it, a digest of the Year Books. The best and most easily consulted edition is that of 1573.

Rolle's *Abridgment of Cases and Resolutions of the Law*, temp. Car. II., published in 1668.

Viner's *Abridgment: a General and Complete Abridgment of Law and Equity*, in 24 vols., folio, published first in 1741-51, and again in 24 vols., 8vo, 1791-94, with a supplement in 6 vols., 8vo, 1799-1801.

Comyn's *Digest of the Laws of England*, in 5 vols., folio, first published in 1762. The author had died in 1740. The fifth and last edition was published, in 8 vols., 8vo, in 1822.

Bacon's *New Abridgment*, published in 1736. The 7th and last edition, in 8 vols., 8vo, was published in 1832.

Cruise's *Digest of the Laws of England respecting Real Property*, in 7 vols., 1804-7. The 4th and last edition was published, in 7 vols., 8vo, in 1835.

There were other abridgments of little note.

It will be seen that the abridgments, as time went on, gradually assumed, as regards certain portions of the law, a *quasi*-encyclopædic character approximating to that of such works as Halsbury's *Laws of England* and the *Encyclopædia of the Laws of England*.

Abroad, Offences Committed. The English Courts have jurisdiction to try prisoners accused of offences committed outside England in the following cases, in addition to those mentioned under COLONIAL GOVERNORS.

(1) Treason and misprision of treason committed outside the United Kingdom by a British subject.

(2) Treason-felony wherever committed.

(3) Offences against the Explosives Act, 1883, committed outside the King's dominions by a British subject.

(4) Offences against the Foreign Enlistment Act, 1870, committed in any part of the King's dominions.

(5) Offences against the Official Secrets Act, 1911, committed in any part of the King's dominions or by British subjects elsewhere.

(6) Misdemeanours by British subjects in public employment outside Great Britain, committed anywhere.

(7) Murder or manslaughter, or being accessory to murder or manslaughter, committed on land outside the United Kingdom.

(8) Murder or manslaughter, or being accessory to murder or manslaughter, where the injury from which death results is inflicted at sea or at any place outside England but death occurs in England.

(9) Offences by British subjects in India.

(10) Offences against the Dockyards, etc., Protection Act, 1772, or the Incitement to Mutiny Acts, 1797, s. 6, and 1812.

(11) Offences against the Slave Trade Act, 1824, s. 9 (Slave Trade Act, 1843).

(12) Offences against the Merchant Shipping Acts, 1894 to 1907.

(13) Bigamy committed anywhere by a British subject.

(14) Perjury and forgery punishable under the Commissioners of Oaths Act, 1889, committed anywhere (Perjury Act, 1911, s. 8; Forgery Act, 1913, s. 14).

(15) Perjury committed before a naval court martial (Perjury Act, 1911, s. 8).

(16) Offences against the Foreign Marriages Act, 1892 (Perjury Act, 1911, s. 8).

(17) Receipt, or possession, in England of property stolen, etc., outside the United Kingdom (Larceny Act, 1916, ss. 33 (4), 39 (1)), but not the larceny, etc., of such property.

(18) Receiving in England property stolen in any other part of the United Kingdom (Larceny Act, 1916, s. 39 (3)).

(19) Larceny, receiving, robbery, burglary, housebreaking, demanding money with menaces, threatening to publish with intent to extort, false pretences, corruptly taking a reward (and being accessory to or abetting such offence) committed in any part of the United Kingdom (Larceny Act, 1916, s. 39 (1)).

A British ship (see BRITISH SHIP) on the high seas is in point of law a part of the United Kingdom. See BIGAMY.

Absence Beyond Seas is absence from the United Kingdom and the adjacent islands belonging to His Majesty. Under the Statutes of Limitation it was formerly a disability in a plaintiff which entitled him to an extension of time after his return, but this is so no longer (see the Mercantile Law Amendment Act, 1856, s. 10, and the Real Property Limitation Act, 1874, s. 4).

In the case of a person against whom a claim exists in respect of a simple contract or tort being absent beyond seas at the time of the right of action accruing, the plaintiff may bring his action within the time limited for that purpose after the defendant's return (see the statute 4 & 5 Anne, c. 16, s. 19, and the Mercantile Law Amendment Act, 1856, ss. 11, 12).

Absence beyond seas at one time entitled an intending appellant to the House of Lords to an extension of the year usually allowed for appealing, but not to more than five years in the whole; no standing order to this effect is now in force. See LIMITATION; DISABILITIES.

Absence for Seven Years. A person marrying a second time whose husband or wife has been absent from such person for seven years at the date of such marriage and has not been known by such person to be living during that time, does not commit bigamy (Offences against the Person Act, 1861, s. 57); but the second marriage will, of course, be invalid if the husband or wife was in fact alive at the time of its celebration. See BIGAMY.

If a person has not been heard of for seven years, and the circumstances are such that, if alive, he would have been heard of, then at the end of those seven years he will be presumed to be dead, but no presumption will arise as to the date of his death. In some cases death will be presumed long before the expiry of seven years; if, for instance, a man was last seen practically *in articulo mortis*, or was last seen advancing with his regiment under heavy fire, or was last seen on the deck of the *Lusitania* just before she sank.

Absence of Accused. In treason and felony, the accused must be present both at the preliminary enquiry and at the trial. If he fails to appear at the trial, the trial cannot proceed; but the process of outlawry may, theoretically, be resorted to. See OUTLAWRY.

In indictable misdemeanours the accused must be present at the prelimary enquiry; but his presence at the actual trial is not absolutely necessary.

As regards offences punishable on summary conviction, the justices may proceed *ex parte* on proof of proper service of the summons; but this course is inexpedient and is seldom adopted.

Absentees, Parliament of, the popular name for a parliament held in Dublin in May, 1610: see 4 *Inst.* 354.

Absoluta sententia expositore non indiget (2 *Inst.* 533). Coke, after quoting, in the original Latin, the *Statutum De Tallagio Non Concedendo*, c. 1 (25 Ed. I., in the Statutes of the Realm), says: "These words are plain without any scruple, absolute without any saving. *Absoluta sententia expositore non indiget*," the meaning of which in the context is, "When you have plain words capable of only one interpretation, no explanation of them is required."

Absolute. A rule or order which is complete and becomes of full effect at once is termed absolute. Such rule or order is to be distinguished from a rule or order *nisi*, which does not become absolute until some party, who was not before the Court when the rule or order *nisi* was made, has had the opportunity of appearing and showing cause why it should not be made absolute. If such cause is shown, the rule or order *nisi* is discharged, that is to say, becomes of no effect; but if such cause is not shown, the rule or order becomes absolute. The distinction between the two kinds of order arises, for instance, on applications for writ of *mandamus*, *certiorari* or *habeas corpus*. See DECREE; ORDER; NISI.

Absque hoc. See WITHOUT THIS.

Absque impetitione vasti. Without impeachment of waste (q.v.).

Absque tali causa, the Latin form of the words "without the alleged cause," used in the replication *de injuria*. See INJURIA.

Abstract of Indictment. It is customary for the clerk of the Court or the prosecutor to prepare for the use of the judge an epitome or abstract of every indictment presented to the Court.

Abstract of Title, a chronological statement of the instruments (see INSTRUMENT) and events under which a person is entitled to property. Every contract for the sale of land implies the right to an abstract unless such right is expressly excluded. In the case of a mortgage, an abstract is also given. A proper abstract will show, without reference being made to any other source of information, the history of the title so far as is material, and also all incumbrances to which the property may be subject.

Upon any sale or mortgage of land, any vendor or mortgagee or his solicitor fraudulently concealing any material instrument or any incumbrance is guilty of misdemeanour (for which, however, he cannot be prosecuted without the leave of the Attorney-General or Solicitor-General) and is also liable to an action for damages (Law of Property Amendment Act, 1859 (s. 24)).

Abundans cautela non nocet (11 *Rep.* 6), (There is no harm done by great caution).

Abuse of Distress. This takes place where, for instance, animals or chattels lawfully distrained are worked or used. Such working or using renders the person distraining liable to an action for conversion.

Abuse of Process. Under Ord. XXV., r. 4, the Court may stay or dismiss any action shown by the pleadings to be frivolous or vexatious, and may, in the case of a defence, order the defence to be struck out where it discloses no reasonable answer and order that judgment be entered accordingly.

It is an abuse of the process to set up in any way a case which has already been decided by a Court of competent jurisdiction. But where the decision is that of a foreign court, the English Court may decline to act under the rule: (1) where it is not clear that such foreign judgment was final, or (2) where it is alleged to have been obtained by fraud. The Court will act under the rule only where the vexatious or frivolous character of the case is clear.

The Court is not bound by the letter of the rule. It can always, in appropriate cases, act under its inherent jurisdiction to protect itself from abuse of its own process. It can, by evidence extraneous to the pleadings, first satisfy itself that the proceedings are in fact frivolous or vexatious, and then it can act under the rule. Moreover, in cases where a litigant has persistently abused the process of the Courts, it can prohibit further applications by him unless he has first obtained the leave of the Court or a master. This power is now the subject of express enactment; for under the Vexatious Actions Act, 1896, the Court may, upon the application of the Attorney-General, order that no legal proceeding shall, without the leave of the Court, be instituted in any Court by a person proved to have habitually and persistently instituted vexatious proceedings. This enactment does not apply to criminal proceedings. See VEXATIOUS; BILL OF PEACE.

Abuttals, or Abutals, the bounds of land; the parts at which it abuts on other lands.

Accedas ad 'curiam. Anciently this was a writ by which a tenant could remove his case from the Court Baron into the Court of Common Pleas, and also the name for the writ of false judgment (q.v.), when it was directed to the old County Court (q.v.).

Acceleration. This is said to take place where an estate or interest in remainder or expectancy falls into possession sooner than it otherwise would by reason of the particular estate or preceding interest being or becoming void. Thus, if A devises land to B with remainder over to C and B attests the will, the remainder over takes effect at once, and is said to have been accelerated. The doctrine would appear to apply to personalty as well as to real estate.

Acceptance. This, in its widest sense, is the act of assenting to an offer; in other words, the expression of a unity of intention with the person making the offer. (See AGREEMENT).

In the law of bills of exchange, acceptance is where the drawee of a bill (or in certain cases some other person) writes his signature across the bill, with or without the word "accepted" or other words. (See PRESENTATION). He thereby engages to pay the bill when due (see the Bills of Exchange Act, 1882, ss. 17-19).

An acceptance may be either general or qualified (*ib.*, *s.* 19). A general acceptance is one without qualification or limitation (*ib.*) A qualified acceptance is either conditional, where the acceptor inserts in the acceptance words which make his liability to pay dependent on the happening of some event, or the like, or partial, where he accepts for part of the amount of the bill; or local, making the bill payable at a particular place, and not elsewhere; or one making the bill payable on a date different from that appearing on the bill, or by some one or more of several drawees (*ib.*).

When a bill has been dishonoured by non-acceptance or protested for better security, any person may accept it for the honour of the drawer or of any of the indorsers, and thereby engage to pay the bill himself at maturity, if it is then presented to the drawee or acceptor and dishonoured. Except where there is a "reference in case of need" (q.v.), it seems that a bill can only be accepted for honour after it has been protested, and hence such an acceptance is sometimes called an acceptance *supra* protest. The acceptor for honour, if he pays the bill, has a right of action against the party for whose honour he accepts and against all whom that party might have sued (see the Bills of Exchange Act, 1882, ss. 65-68). See PROTEST.

Acceptance of Service. This is effected in proceedings in the High Court, where a solicitor, with the authority of the defendant, accepts service of a writ of summons, by writing on it words to the following effect: "I accept service of the writ on behalf of the defendant A B, and undertake to enter an appearance for him thereto in due course." If such appearance is not entered, the solicitor is liable to attachment. See Ord. IX., r. 1: Ord. XI., r. 18. Acceptance of service is not permissible in divorce proceedings.

Acceptor, a person who accepts a bill of exchange. See ACCEPTANCE.

Access. When there is question of the legitimacy of a child of a married woman, the child will be held to be legitimate unless it can be clearly shown that the husband had not access to the wife, that is to say, opportunity for marital intercourse, during such time as admitted of his being the father.

As regards land, the right to access is that possessed by a landowner to go on to an adjoining highway from his land, and *vice versa*, without obstruction.

As to access of light, see ANCIENT LIGHTS; EASEMENTS.

As to the access of air, see AIR.

Accessio cedit principali. This maxim embodies the doctrine of accession (see ACCESSION) and means that an accessory thing when annexed to a principal thing, thereby and thereupon becomes part of, and the property of the owner of, the principal thing.

Accession, strictly speaking, is where a thing which belongs to one person becomes the property of someone else by reason of its becoming added to or incorporated with a thing belonging to the latter. This takes place in the case of alluvion (q.v.), dereliction (q.v.), the addition of buildings, plants, etc. to the soil, the erection of fixtures, etc.

Blackstone includes under accession what is more correctly called *specificatio*, which takes place where a person makes a new thing (*species*) out of materials belonging to another, and thereby acquires the ownership of them, subject to making compensation to the former owner for their original value. He also includes under accession the acquisition of young animals born in confinement; this is more correctly called accretion (q.v.). See COMMIXTURE; CONFUSION; FIXTURES; SPECIFICATIO.

Accession of the Sovereign. Upon the death of a sovereign, his heir instantly and automatic-

ally becomes the sovereign. This has been the settled law since the reign of Edward IV., and it is expressed by the maxim "The King never dies." Neither the proclamation of a new sovereign nor the subsequent making by him of the declaration required by the Accession Declaration Act, 1910, is in any way necessary to his becoming King to all intents and purposes; but failure to make the declaration would terminate the reign.

Accessorium non ducit, sed sequitur suum principale (*Co. Litt.* 152 (*a*)), the incident shall pass by the grant of the principal, but not the principal by the grant of the incident. Thus, rent is incident to the possession and will pass by a grant of the reversion; but the reversion will not pass by a grant of the rent generally. Compare QUAE ACCESSIONUM, ETC.

Accessorium non trahit principale (1 *Poth Oblig.* 477), an accessory thing does not carry with it the thing to which it is accessory. Thus the release of a surety is not the release of his principal; although the release of the principal is a release of the surety also.

Accessorium sequitur principale, an accessory thing goes with the thing to which it is accessory.

Accessorius sequitur naturam sui principalis (3 *Inst.* 139). (An accessory is of the same nature as the principal offender). "The accessory cannot be guilty of petit treason where the principal is guilty but of murder," says Coke, *ubi supra.*

Accessory. There are no accessories in treasons or misdemeanours. In treason, all are deemed principals who would be deemed accessories either before or after the fact if the crime were felony. In misdemeanours, no offence is committed by those who, if the offence were felony, would be accessories after the fact, unless the facts disclose conspiracy to defeat the ends of justice or some other substantive offence; but in misdemeanours, all who would be accessories before the fact, if the crime were felony, are deemed principals and are punishable as such.

In felonies, those concerned in the crime, otherwise than as principals, are divided into accessories before the fact and accessories after the fact. An accessory before the fact is one who directly or indirectly procures by any means the commission of any felony but who is not actually or constructively present at, and aiding in, the commission of the felony. Accessories before the fact are liable to whatever punishment is assigned by law to the felony and may be convicted though the principal felon has not been arrested or convicted or even though he has been acquitted. An accessory after the fact is one who, with knowledge that a felony has been committed and not being the wife of the felon, in any way secures or attempts to secure the escape of the felon, whether by harbouring him or otherwise. An accessory after the fact to any felony is (in the absence of an express enactment to the contrary) himself guilty of felony and may be convicted whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice.

In offences punishable on summary conviction, there are in point of law no accessories; but any person who aids, abets, counsels or procures the commission of any such offence is liable to the same punishment as a person who commits the offence (Summary Jurisdiction Act, 1848, s. 5).

Accident. In strictness, an occurrence cannot be called an accident unless it is due neither to design nor to negligence. So, in Courts of equity the use of the word "accident" has always been confined to such an unforeseen event, misfortune, loss, act, or omission as is not the result of any negligence or misconduct by the party applying for relief (*Story*, 78).

Formerly, there were many cases of accidental losses which were recognised as giving a claim to relief in equity but not at law; thus, if a deed or negotiable security were lost, equity would enforce the plaintiff's rights under the document on his giving, if necessary, a proper bond of indemnity to the defendant. A similar jurisdiction was given to the common law Courts, so far as relates to negotiable instruments, by the Common Law Procedure Act, 1854, s. 87; see now also s. 70 of the Bills of Exchange Act, 1882, which also by s. 69 gives the holder of a bill which he has lost the right to obtain a duplicate on giving indemnity. So, if an annuity was directed by a will to be secured by an investment in public stock, and an investment was accordingly made, sufficient at the time for the purpose, but afterwards the stock was reduced by Act of Parliament so that it became insufficient, equity would decree the deficiency to be made up out of the residuary estate. Since the Judicature Acts, of course, relief is given in such cases in all the divisions of the High Court (see the Judicature Act, 1873, s. 24).

In the criminal law, an effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence, as a consequence of such act, is not so probable that a person of ordinary prudence ought, in the circumstances in

which it is done, to take reasonable precautions against it (*Stephen, Dig. of Crim. Law*, art. 210).

In the Fatal Accidents Act, 1846, and also in the Notice of Accidents Acts, 1894 and 1906, the word is used to describe events which are the result of negligence. In policies of assurances against accidents, the word covers events caused by the negligence as well of the assured as of other persons; and, where an employer is assured against liability to pay compensation to workmen injured by accident, the word means such occurrence as will render the employer liable under the Workmen's Compensation Act, 1906. Where, for instance, a boy standing on a bridge over a railway intentionally throws a stone at the engine of a passing train and injures the driver, there will be held to have been an accident within s. 1 of the Workmen's Compensation Act, 1906.

Accidents, Notice of. When an accident occurs in the construction, use, working, or repair of any railway (including any siding joining a railway, but not belonging to the railway company; see the Railway Employment (Prevention of Accidents) Act, 1900, s. 13 (2)), tramroad, tramway, canal, bridge, tunnel, or other work authorised by any local or personal Act, or in the use or working of any traction engine or other engine or machine worked by steam in the open air, or in any employment in respect of which the Board of Trade has made an order under s. 2 (2) of the Notice of Accidents Act, 1894, notice of the accident must be sent by the employer to the Board of Trade within six days from the date of the accident if the accident causes to any person employed as above either loss of life or such bodily injury as causes him to be absent one whole day (Notice of Accidents Act, 1894, ss. 1, 2 (2), sch.; Notice of Accidents Act, 1906, s. 6).

The Notice of Accidents Act, 1906, also provides for notice of accidents in mines or quarries (s. 2) other than mines specified in the Coal Mines Act, 1911, s. 1 (Coal Mines Act, 1911, s. 126, sch. 4), or on railway sidings used in connection therewith (s. 3), or in factories and workshops (s. 4), and enables the Secretary of State to require notice not merely of accidents, but also of dangerous occurrences (s. 5).

As to notice of accidents and dangerous occurrences in the mines specified in s. 1 of the Coal Mines Act, 1911, see ss. 80 and 81 of that Act.

As to notice of accidents by explosion or fire in or about any explosives factory, magazine, or store, see the Explosives Act, 1875, s. 63.

As to the notice to be given by a workman, accidentally injured, as a condition precedent to his obtaining compensation under the Workmen's Compensation Act, 1906, see s. 2 of that Act. The same Act provides, by s. 12, that every employer in any industry to which the Secretary of State may direct, that the section shall apply shall send an annual return of the compensation paid by him under the Act.

Accollade. This is the dubbing or touching on the shoulder with the flat of a sword, which takes place when knighthood is conferred.

Accommodation Bill. An accommodation bill (in the popular sense) is one drawn by A B on C D and accepted by the latter without consideration, that is to say, without receiving value therefor, merely for the benefit of A B (see the Bills of Exchange Act, 1882, s. 28 (1)). On such a bill, C D is liable to a holder for value, and it is immaterial whether such holder took the bill knowing it to be an accommodation bill (*ib.*, s. 28 (2)). But, owing to the want of consideration, A B cannot sue C D on the bill, whereas C D is entitled to be indemnified by A B against the liability of him, C D, on the bill.

The term, in its wider and more accurate sense, includes any bill to which there is an accommodation party, that is to say, a person who has signed the bill as drawer, acceptor, or indorser, without receiving value therefor and for the purpose of lending his name to some other person (Bills of Exchange Act, 1882, s. 28 (1)). When one person does this in consideration of another doing the same for him, the bills are called mutual accommodation bills.

Accommodation Works. When a railway company takes land compulsorily it is bound to construct all gates, bridges, fences, etc., necessary to make good any interruption to the use of the lands through which the railway passes (see Lands Clauses Consolidation Act, 1845, s. 68). These are known as accommodation works.

Accomplice, a term used, without statutory authority, chiefly in connection with evidence in criminal cases, to denote any person who, either as a principal or as an accessory (see PRINCIPAL; ACCESSORY), has been associated with another person in the commission of any offence, whether treason, felony, or misdemeanour. The evidence of an accomplice is admissible. But it is the duty of a judge to advise the jury not to convict upon such evidence without corroboration. If, however, the jury, before the enactment of the Criminal Appeal Act, 1907, chose to disregard such

advice, their verdict could not be disturbed, for there is no positive rule of law to the effect that a prisoner cannot be convicted upon the uncorroborated evidence of an accomplice. But now it is the practice of the Court of Criminal Appeal to quash any conviction obtained on the uncorroborated evidence of an accomplice.

Accord and Satisfaction. This is a defence to an action consisting of two parts—one being an agreement that the debtor shall do or pay, and that the claimant shall accept, something in satisfaction of the cause of action—this is the *accord*; and the other being the actual execution of such agreement—this is the *satisfaction*.

There must be satisfaction as well as accord; that is to say, the agreement must have been carried out.

The mere payment and acceptance, in full discharge, of a sum smaller than an undisputed debt is not satisfaction, and the balance can be sued for; but if something other than mere money, such, for instance, as a negotiable instrument, is given in satisfaction, then the sufficiency of the satisfaction will not be enquired into. And an agreement with a debtor by a number of creditors, where each, in consideration of the agreement of the others, agrees to take less than his debt, is effective. See ARRANGEMENT BETWEEN DEBTORS AND CREDITORS. The accord need not be in writing.

Account, Action of. At common law an action lay against a receiver or bailiff, or against a merchant by another merchant in respect of dealings between them as merchants, for not rendering a proper account of profits. Under 4 & 5 Anne, c. 3 (otherwise cited as 4 Anne, c. 16), s. 27, one joint tenant or tenant in common may bring an action of account against the other for receiving more than his just share of the rents and profits of the land. But, instead of bringing these obsolete common law actions, a plaintiff in either division of the High Court may now indorse his writ, under Ord. III., r. 8, with a claim for an account; and then, after the time for appearance has expired, an order for proper accounts will be made under Ord. XV., r. 1, unless the defendant satisfy the Court or Judge that there is some preliminary question to be tried, such as the question whether the plaintiff is entitled to an account or the question whether the defendant has not already fully accounted. In a suitable case the account may be taken as provided by the Arbitration Act, 1889, s. 14; but it is generally taken as prescribed in Ord. XXXIII., rr. 3-9.

Even though no claim for an account is indorsed on the writ, the Court or a Judge may at any time, under Ord. XXXIII., r. 2, direct any necessary accounts to be taken.

Accountable Receipt. This is an acknowledgment of the receipt of money, or of any chattel, to be accounted for by the person receiving it. Forgery of an accountable receipt is felony (Forgery Act, 1913, s. 2 (2) (*a*)), such a receipt being a "valuable security" within the meaning of that section (*ib.*, s. 18).

Accountant-General. The Accountant-General of the Court of Chancery was an officer created by the statute 12 Geo. 1, c. 32, who formerly received and lodged in the Bank of England all moneys paid into that Court. The Accountant-General of the Court of Exchequer, an officer also created by statute, used to perform similar duties in that Court. The Chancery Funds Act, 1872, abolished both offices and substituted the Paymaster-General (q.v.). By virtue of the Supreme Court of Judicature (Funds, etc.) Act, 1883, all moneys in Court in any division of the High Court are now under the control of the Paymaster-General (q.v.). In the High Court of Justice in Ireland an officer of that Court, known as the Accountant-General, performs (or, down to a year ago, used to perform) functions analogous to those of the Paymaster-General in England.

Accountant to the Crown. This means anyone who has received money for the Crown and is accountable therefor. Formerly, the Crown had a lien upon all lands and goods of the accountant as from the time when he became such accountant. But now, while the lien of the Crown as against goods still remains, the Land Charges Act, 1900, s. 2, enacts that no Crown debt of whatever date shall operate as a charge on land, or on any interest in land, unless and until a writ or order enforcing it has been registered pursuant to the Land Charges Registration Act, 1888, s. 8. The remedy of the Crown by writ of extent (see EXTENT) remains otherwise in full force. Crown debts take priority of all other debts. See DEBT.

Account Duty. This is the popular title of the duty imposed by the Customs and Inland Revenue Act, 1881, s. 38 (as amended by the Customs and Inland Revenue Act, 1889, s. 11, and the Finance (1909-10) Act, 1910, s. 59 (1)), upon personal property above the value of £100 passing at death by way of *donatio mortis causa*, joint investment, voluntary settlement, or under a policy of insurance kept up for a donee, or passing by voluntary disposition within three years before death. It was meant

to apply to property which was not subject to probate duty. The rate of the duty varied with the value of the property from 2 per cent. to 3 per cent. The duty is not payable, in respect of deaths since 1st August, 1894, upon any property upon which estate duty (q.v.) is payable (Finance Act, 1894, s. 1, Sch. I. (1)). Nearly all property subject to account duty is subject also to estate duty. There are, however, a number of cases (as to which see *Hanson, Death Duties* (6th ed.), pp. 76-78) in which estate duty is not payable, and in some of which account duty still is payable.

Account, Settled. A settled account is a statement in writing of the accounts between two parties, one of whom is under a duty to account to the other, which both of them have agreed to and accepted as correct. It must show clearly either what balance is due from one to the other or that no balance is due. It is an admission of liability by the party against whom the balance appears; the law implies that he has promised to pay such balance; and on this implied promise he may be sued.

The plea of a settled account is a good defence to an action for an account, and, if coupled with an allegation that the balance appearing on the account has been paid, it is also a good defence to an action for money received by the defendant for the use of the plaintiff. The plaintiff may, however, in reply allege that the account is so affected by error (which he must specify) or by fraud that he ought not to be bound by it. Whether the account shall be set aside, or whether only leave will be given to the plaintiff to "surcharge and falsify" (that is to say, to add items in his favour which were omitted, and to strike out items against him which were wrongly inserted) is a matter entirely in the discretion of the Court. If fraud be proved, the account will be wholly set aside; but if only errors are proved, the account will not be wholly set aside unless there are a large number of errors, except in the case of parties in a fiduciary relationship (such as solicitor and client), when a less degree of error will lead to the account being taken as if there had never been a settlement. When one party is permitted to surcharge and falsify, the other may do so too.

As to reopening an account between a moneylender and his client, see MONEYLENDERS.

Account stated. This is an admission of a sum of money being due from one person to another, from which a promise to pay is implied in law. It differs from a settled account (see ACCOUNT, SETTLED), inasmuch as it applies to transactions with regard to which no person is under a duty to account to another, and with regard to which, therefore, the action for an account will not lie. The account, unlike a settled account, which must be in writing, may be stated either orally or in writing, and in any form. Thus, an I.O.U. is evidence of an account stated. An account stated is not necessarily binding. It may be shown to have been given in mistake, or for a debt in respect of which there has been a failure of consideration, or for a debt the consideration for which was illegal, or for a debt for which the person making the admission was not liable; and under the Infants Relief Act, 1874, s. 1, all accounts stated with infants are void.

An account stated is a distinct cause of action. When it is sued on as such it must be alleged with particulars in the statement of claim; but when it is merely relied on as evidence or admission in any other cause of action it is not to be alleged in the pleadings (R.S.C., Ord. XX., r. 8).

Accounts and Inquiries. Under R.S.C., Ord. XXXIII., r. 2, the Court or a judge may, at any stage of the proceedings in any cause or matter, direct any necessary enquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried as to which it may be proper that the cause or matter should proceed in the ordinary manner.

Under this rule the whole of the cause or matter cannot be sent to chambers to be tried there. It merely authorises, before trial, accounts and enquiries which would otherwise have been directed at the trial. When the provisions of the rule are applied after judgment, only such accounts and enquiries can be directed as are necessary for working out the judgment.

Under Ord. XV., r. 1, where the writ of summons is indorsed for an account under Ord. III., r. 8, or where the indorsement of the writ involves taking an account, then if the defendant fails to appear, or does not after appearance satisfy the Court that there is some preliminary question to be tried, an order for the proper accounts will be made. An order under this rule, unlike an order under Ord. XXXIII., r. 2, usually takes the place of the judgment.

These rules extend to the King's Bench Division; but that division, having no machinery for taking accounts, will, as a rule, transfer to the Chancery Division an action

in which the taking of accounts appears necessary.

An application for an order under Ord. XV. is made by summons. Under Ord. XXXIII., the application is made either by summons, or, if there has been a summons for directions in the action, by motion on notice under such summons. Except in cases within Ord. LV., r. 15 (*a*) (which relates to trustees, etc.) the order may be made by a master or a district registrar. In a case coming within Ord. 55, r. 15 (*a*), it must be made by the judge.

Accounts and enquiries are usually prosecuted in chambers before a master, but, where the Court so directs, they may be prosecuted before a district registrar.

Accounts, Falsification of. Clerk, officer or servant or person acting as such (1) wilfully, and with intent to defraud, destroying, altering, mutilating, or falsifying any account, etc., belonging to or in possession of his employer, or received by him for his employer, or (2) wilfully and with like intent making or concurring in making, or being privy to making, any false entry in, or omitting or altering any material particular from or in such account, etc., is guilty of misdemeanour (Falsification of Accounts Act, 1875, ss. 1, 3; Larceny Act, 1861, s. 117).

Any director, officer, or contributory of a company being wound up, destroying, mutilating, altering, or falsifying any book, etc., or making or being privy to the making of any false or fraudulent entry in any book, etc., belonging to the company, with intent to defraud or deceive, is guilty of misdemeanour (Companies (Consolidation) Act, 1908, s. 216).

The Larceny Act, 1861, ss. 82, 83, 84, makes it misdemeanour for directors, etc., of any public company or body corporate to keep fraudulent accounts, or wilfully to destroy books, etc., or to publish fraudulent accounts relating or belonging to such company or body. No person guilty of an offence under these sections can refuse to answer any question in any proceedings by any person aggrieved or in bankruptcy; but he is protected from having his answer used in criminal proceedings against him as and to the extent set forth in s. 85 of the Larceny Act, 1861, and in the Bankruptcy Act, 1914, s. 166.

Accredit. In international law, this is to furnish a diplomatic agent with papers, called credentials or letters of credit, which certify his public character. An ambassador, for instance, furnished with such papers is said to be accredited.

Accretion; Accrual; Accrue; Accruer. I. A right is said to accrue when it vests in a person, especially when it does so gradually or without his active intervention, e.g., by lapse of time, or by the determination of a preceding right. Thus the Statute of Limitations, 1833, contains provisions for ascertaining when the right to be barred is deemed to have first accrued, i.e., vested in the person entitled to exercise it; so, by the Apportionment Act, 1870, periodical payments in the nature of income are to be considered as accruing (i.e., the right to the payment is to be considered as arising) from day to day (see APPORTIONMENT). Hence a debt owing is opposed to a debt accruing—the former being a debt payable immediately, the latter a debt payable at a future time (*debitum in præsenti solvendum in futuro*). The fact of a right accruing is called its accrual.

II. When a fund, share, estate, security, or other property is increased by additions which take place *ipso jure* or *ipso facto*, the additions are said to accrue either to the original fund or to the person entitled to it. The most important cases of this are (1) when property is increased or added to by an act of nature—as in the case of the young of animals, which belong to the owners of the parents, and in the case of alluvion (q.v.) and dereliction (q.v.); (2) where property is increased or added to by the act of the party, but not by a mode of acquisition recognised by law, as in the case of encroachment (q.v.) by a tenant; (3) when a fund is increased by additions which arise from the rule *accessorium sequitur principale* (q.v.): this is called accretion, and the additions themselves are called accretions—e.g., the additions to a charitable fund from the increase in the rents of the land of which it originally consisted, the savings of a married woman's separate estate, etc.; (4) when A, not being seised of Blackacre, grants it to B, and afterwards becomes seised of it, whereupon it instantly passes to B; (5) when property is divisible among several persons so that, on a certain event happening, one of them is excluded from participation and the others take the whole: the share of that one is said to accrue to the others, and the fact of its doing so is called its accruer—thus, if £300 is given by will to three minors, A, B, and C, with a proviso that if any one of them dies under twenty-one his shares shall go to the survivors on A's death under age his share accrues to B and C, who (if they both attain twenty-one) will thus take £150 each, of which £100 is their original and £50 their accrued share; the clause containing this proviso is called a clause

of accruer. The operation of the clause does not extend to the accrued shares unless that intention appears, so that if B also died under age, C would only take B's original share of £100 in addition to his own £150, and the testator would die intestate as to B's accrued share of £50. This result is always guarded against in well-drawn instruments by making the clause expressly extend to accrued shares. See JUS ACCRESCENDI; SURVIVORSHIP; ACCESSION; ALLUVION.

Accumulation. This is the putting by of dividends, rents, and other incomes, and converting them into principal by investing them, and again investing the income arising from the new principal, and so on.

Prior to 28th July, 1800, there was nothing to prevent a settlement, whether by will or deed, of property so that the income should accumulate for a life or lives in being and twenty-one years afterwards (see PERPETUITY), the effect of which was that accumulation might well last for, say, a hundred years.

But the Accumulation Act, 1800 (commonly called the Thellusson Act), prohibits the settlement, whether by deed or will, of any property in such manner that the income shall be accumulated for any longer period than one only of the following periods:—(1) The life of the settlor; (2) the term of twenty-one years from the death of the settlor; (3) during the minority or respective minorities of any person who shall be living or *en ventre sa mere* at the death of the settlor; and (4) during the minority or respective minorities of any person or persons who, if of full age, would be entitled to the income directed to be accumulated.

The Act directs that, so far as the direction to accumulate shall be void for excess, the income shall belong to the person or persons "who would have been entitled thereto if such accumulation had not been directed."

The Act expressly excepts from its operation:—(*a*) Provisions for the payment of the debts of the settlor or of any other person; (*b*) provisions for raising portions for children either of the settlor or of any person taking any interest under the settlement; (*c*) directions touching the sale of wood or timber.

The Act did not originally extend to Scotland, but it was applied to "heritable property" in Scotland by the Entail Amendment Act, 1838, s. 41. It has never been applied to Ireland.

The Accumulations Act, 1892, forbids the settlement or disposition of any property, real or personal, so as to accumulate the income "for the purchase of land only" for any longer period than during the minority of a person who, if of full age, would be entitled to the income.

Where property is held by trustees in trust for an infant contingently on his attaining twenty-one or some less age, the trustees are, under s. 43 of the Conveyancing Act, 1881, to accumulate for him so much of the income as is not required for his maintenance (q.v.); and in any settlement made since 1881 no accumulation clause is inserted to provide for such a case. But in other cases accumulation can take place only where it is expressly directed.

Accumulative Judgment, Sentence. See CUMULATIVE JUDGMENT, SENTENCE.

Accusare nemo se debet; Accusare nemo se debet nisi coram Deo (*Hawke*, 222). (No one is bound to accuse himself except to God.) This means that an accused person is always entitled to plead not guilty, and also that a witness is not bound to answer any question or to produce any document where, in the opinion of the Court, the answer to the question or the production of the document would tend to expose the witness, or apparently his or her wife or husband, to any criminal charge or to any penalty or forfeiture. But a witness cannot refuse to answer on the ground that his answer would tend to establish that he owes a debt, or is otherwise liable to civil proceedings. See ADMISSION (IN CRIMINAL CASES).

Accusation of Crime. A conspiracy to accuse a person falsely of crime is a common law misdemeanour.

As to accusations of crime, see ABOMINABLE CRIME; ADVOCATE; DEFAMATION; MALICIOUS PROSECUTION; MENACES; PRIVILEGE.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit (*Moor*. 817). (An accuser is not to be heard after a reasonable time, unless he can account satisfactorily for the delay.) The maxim is to be found in *Bracton*, who wrote about 1250, and it was cited in the Star Chamber in 1612 upon the hearing of a charge against sundry persons who were charged with conspiring to bring a charge of murder sixteen years after the death of the man alleged to be murdered. The maxim is not of general application in English law. Except where a time limit for prosecution is fixed by express enactment, no delay is a bar to a prosecution. But the evidence of a witness who, without satisfactory explanation, fails for a long time to disclose his knowledge of a crime, will naturally be regarded with suspicion.

Accustomed Rent. Where a power of leasing was created, it was formerly usual to require the reservation of the "accustomed rent" or of the "ancient and accustomed rent," instead of the "best" or "most rent." When this was done it meant the rent reserved at the creation of the power, or, if there was then no rent, the last preceding rent.

Ac etiam. The statute 13 Car. 2, st. 2, c. 2, s. 1, provided that no greater bail than £40 was to be required from any person arrested upon any writ, bill, or other process issuing out of the Court of King's Bench or Common Pleas, unless the true cause of action was set forth in such process. The particulars of the cause of action in processes, such as Bills of Middlesex Writs, etc., for the recovery of debts over £10 came to be introduced by the words *Ac etiam* (and also); and the words were used to describe the clause introduced by them.

Acknowledgment. This term is used in several Acts of Parliament relating to the limitation of time for actions. It means an admission in writing that a debt is due, or that some claim or liability is still in existence. If it be a valid acknowledgment within the meaning of the statute applicable to the matter in question, it prevents the statute from running, i.e., it prevents the cause of action from becoming unsustainable. To make an acknowledgment efficacious it must not only be in proper terms, but it must also be made by the proper person, to the proper person, and with the proper (if any) formalities.

What is an acknowledgment within the various statutes, is a question of construction to be determined by the Court in each case. There are, however, some general rules on the subject. Thus, an acknowledgment under the Civil Procedure Act, 1833 (as to specialties), need not amount to a promise to pay, while, under the Statute of Frauds Amendment Act, 1828 (as to simple contract debts), the acknowledgment must contain, either expressly or impliedly, not only an admission of the debt, but also a promise to pay accordingly. These words in a letter: "I wish I could comply with your request, for I am very wretched on account of your account not being paid; there is a prospect of an abundant harvest, which must turn into a goodly sum, and considerably reduce your account; if it does not, the concern must be broken up to meet it; my hope is, that out of the present harvest you will be paid"— were held to be a sufficient acknowledgment to revive a debt under the Statute of Frauds Amendment Act, 1828. In the case of the statutes relating to debts, part payment on account of principal or interest amounts to an acknowledgment, so as to prevent the statute from running.

The word "acknowledgment" is also used in connection with wills and certain mortgages.

If a will is not signed in the presence of the witnesses, the testator must acknowledge his signature in their presence (Wills Act, 1837, s. 9). It is not necessary that he should say in express words to the witnesses, "That is my signature": it is sufficient if it clearly appears that the signature was existent in the will when it was produced to the witnesses, and was seen by them when they did, at the testator's request, subscribe the will.

If a mortgagee of copyholds by conditional surrender has not been admitted, and the mortgage is paid off, the practice is to enter on the Court rolls a memorandum, called an acknowledgment of satisfaction, stating that the debt has been paid. This is treated as sufficient evidence of the discharge of the mortgage and as vacating the surrender. See TITLE DEEDS.

Acknowledgment Money, a sum of money formerly paid by copyhold tenants of certain manors on the death of the lord in acknowledgment of their new lord. It was distinct from the fine, which, in some exceptional cases, is still paid on the death of the lord.

Acknowledgment of Deeds. All deeds purporting to dispose of any estate or interest in the land of a woman married before 1st January, 1883, or of her reversionary interest in personal property, must, unless she is entitled thereto for her separate use or her title thereto has accrued since that date, be executed by her husband, as well as by her, and must be acknowledged by her in accordance with the Fines and Recoveries Act, 1833, and s. 7 of the Conveyancing Act, 1882, and the rules made thereunder.

Neither the concurrence of the husband nor any acknowledgment is required, except as stated above (Married Women's Property Act, 1882).

The acknowledgment is made by the wife before a judge or a commissioner appointed for the purpose, who examines her separately and apart from her husband as to her knowledge of, and consent to, the contents of the deed. If she then acknowledges that she has freely and voluntarily executed the deed, a memorandum setting forth the fact of her separate examination as above, and of her acknowledgment, is then indorsed on the deed

by the judge or commissioner. See FINE; REVERSIONARY.

A communi observantia non est recedendum (*Co. Litt.* 229). (Common usage is not to be departed from.) This maxim merely expresses the conservatism of the common law. "Commonly a new invention doth offend against many rules and reasons of the common law," says Lord Coke (*Co. Litt.* 379). Compare MINIME MUTANDA, ETC., PERICULOSUM EST, ETC.; OMNIS INNOVATIO, ETC.

Acquiescence. This takes place when a person, with full knowledge of his own rights and of any acts which intringe them, has, either at the time of infringement or after infringement, by his conduct led the persons responsible for the infringement to believe that he has waived or abandoned his rights. It is frequently associated with the word *laches* (meaning slackness) in the phrase "*laches* and acquiescence."

Thus, if one is induced by fraud to enter into a contract and subsequently discovers the fraud, he will be held to have acquiesced in, and so to have confirmed, the contract, if he fails for a number of years to bring proceedings to have the contract set aside and is guilty of *laches*; and, if the acquiescence occurs while the act complained of is in progress, and if the person acquiescing is at the time fully aware of his rights, he cannot afterwards be heard to complain of the act. See ESTOPPEL; VIGILANTIBUS, ETC.

Acquietandis Plegiis, a writ which formerly lay for a surety against a creditor who refused to acquit (q.v.) him after the debt was satisfied.

Acquietare, to acquit (q.v.).

Acquit, the English for *acquietare,* which meant *quietum reddere* (to make quiet). It was originally in general use as meaning to discharge from pecuniary liability; now it is used as an equivalent for "find not guilty."

Acquittal. This term applies to offences tried on indictment, and means discharge from prosecution upon a verdict of not guilty, or on a successful plea of pardon or of *autrefois acquit* or *autrefois convict* (q.v.). Acquittal is a bar to any subsequent prosecution for the same offence. Whether it is a bar or not to another, and a different, charge depends on whether the evidence necessary to support a conviction on the second prosecution would have been sufficient to support a conviction on the first.

In the old books, the term is also used in a special sense to denote an obligation by a lord to his tenant. In some cases, where land was held of a mesne lord, he was bound to protect his tenant from any claims by lords paramount arising out of the services due to them by the mesne lord; this was called acquittal. See HOMAGE.

Acquittance, a written acknowledgment of the payment of a sum of money or debt due. It cannot be pleaded, but can only be given in evidence, unless it is under seal, in which case it is called a release. An acquittance is an answer to an action for the sum of money or debt. Forgery of an acquittance is felony under the Forgery Act, 1913, s. 2 (2) (*a*) (s. 18 (1), *sub* "valuable security").

Acreage. The imperial or standard acre contains 4,840 square yards (Weights and Measures Act, 1878, s. 12). This is the only acre known to the law. Customary acres are the Welsh acre, containing 9,680 square yards; the Irish acre, containing 7,840 square yards; and the Scotch acre, containing 6,150⅖ square yards. In any will, contract for sale, conveyance, or other instrument, the word "acre" will be taken to mean the statutory acre unless a customary acre is clearly indicated, and no evidence extrinsic to the will, etc., will be admitted to show that a customary acre was in fact intended.

A contract for the sale of land by the customary acre is probably lawful.

Acrobat. See CRUELTY TO CHILDREN. DANGEROUS PERFORMANCES.

Acta exteriora indicant interiora secreta (8 *Rep.* 146). (External actions show internal secrets); that is to say, a man's intentions are to be inferred from his acts.

Act in Pais. This means literally an act in the country. See IN PAIS.

Actionare, i.e., IN JUS VOCARE (q.v.).

Actiones nominatae. Anciently this meant the approved forms of writs. See ACTION ON THE CASE.

Action of a Writ. This was the term used for a pleading showing that the plaintiff had issued a writ which was not appropriate to the cause of action alleged. See ACTION ON THE CASE; compare PLEA TO THE ACTION.

Actio. non (*Actionem non*). The technical name of the commencement of a plea in bar, down to Hilary Term, 1834. Before 1733 (see FRENCH) these words were part of the Latin form which had for long been in use. Compare SI ACTIONEM; see *Stephen, Pleading* (5th ed.), p. 435.

Actio non datur non damnificato (*Jenk. Cent.* 69). (No one who is not damnified has a cause of action.)

Action on the Case. At a very early stage

in English law, writs were framed for the more obvious causes of action. Each had its appropriate *formula* of complaint or claim. As time went on, this list came to be regarded as an exhaustive catalogue of the causes of action known to the law of England. If there was no writ with a formula to fit the case of an injured person, then that person had no remedy. The Statute of Westminster II., 13 Edw. 1, c. 24, was passed in 1288 in order to put an end to this state of affairs. It enacted that when a writ was found in Chancery (where original writs were prepared for suitors by the clerks) but in a like case (*in consimili casu*), falling under the same right, and requiring the same remedy, no writ was to be found, the clerks should agree in making a new writ, or, if they could not agree, they were to refer the matter to Parliament. Any writ framed under this power was known as a writ in an action on the case.

An action on the case was one brought to recover damages for a loss or injury resulting, not directly, but indirectly or consequentially, from the act complained of. Thus, trespass was one of the old causes of action. If a man threw a log into a highway and hit a person there, that injured person might maintain an action of trespass in respect of the injury sustained, because it resulted directly from the act complained of; but if, while the log was lying where it had been thrown, a person fell over it and was injured, he could only bring an action of trespass on the case, because the injury resulted only indirectly from the act complained of. Parliament from time to time itself provided new writs; but down to 1875 a plaintiff's writ had either to be in one of the ancient forms, or in a form authorised by statute, or *in consimili casu* with one of the ancient forms. An action on the case was thus one which used to lie in the absence of any more appropriate form of action. All forms of action are now abolished by the Judicature Acts; but the term "action on the case" is still used to describe an action which would have been so described before these Acts.

Action, Prejudicial. In the time of Bracton, the *actio præjudicialius* was a proceeding so called because it had to be disposed of before the hearing of a pending action. Thus, if it were pleaded that a plaintiff, claiming as heir of his father's lands held by a younger brother, was in fact a bastard, then the question of pedigree had to be decided before the original action could proceed.

Actions. As will be seen under ACTION ON THE CASE, a plaintiff down to 1875 could sue only in one or other of certain forms of action. If he selected the wrong form of action, he necessarily failed, even though he could clearly have succeeded on a different writ. Now all forms of action are abolished. The plaintiff merely states the facts on which he relies, and claims the relief which he desires.

Immediately before 1875 the following were the several actions known to the law (I.) on contract, which were (*a*) covenant, being on a deed alone; (*b*) assumpsit, being on a simple contract only; (*c*) debt, being either on a deed or on a simple contract; (*d*) *scire facias*, being on a judgment; (*e*) account; and (*f*) annuity: (II.) on tort, which were (*g*) trespass, *quare clausum fregit*, to real property, and trespass, *de bonis asportatis*, to goods; (*h*) case; (*i*) trover; (*j*) detinue; and (*k*) replevin: and (III.) the mixed action of ejectment.

Before the Judicature Acts, "action" or "action at law" generally meant a proceeding in one of the common law Courts, as opposed to a suit in equity. The frame of the writ, and the pleadings in each case, depended on the nature of the right to be enforced and was extremely technical. In early times, actions were divided into criminal and civil, criminal actions being appeals and other proceedings in the name of the Crown. In modern times, however, "action" always meant a civil action. In this sense, actions were divided into real, personal, and mixed:—real (or feudal) actions being those for the specific recovery of lands or other realty; personal actions, those for the recovery of a debt, personal chattel, or damages; and mixed actions, those for the recovery of real property, together with damages for a wrong connected with it. By the Real Property Limitations Act, 1833, s. 36, all real and mixed actions were abolished, except the writs of right of dower, dower, *quare impedit*, and ejectment (see those titles).

Actions were also divided into local and transitory, according as they were founded on such causes of action as necessarily referred to some particular locality (as in the case of trespasses to land) or not; but this distinction no longer exists (see VENUE). Another now obsolete distinction is between a feint, faint, or feigned action—that is, one in which the words of the writ were true, yet, for certain causes not appearing on the writ, the plaintiff had no right to recover what he claimed—and a false action, or one in which the words were false or untrue. If a person recovered land against a tenant in tail by a feint or false

action, after the death of the tenant in tail his issue could recover the land back again.

Actions and Matters in the High Court. Before the Judicature Acts, there were actions at common law, suits in Chancery, causes in Admiralty, and citations in Probate. R.S.C., Ord. I., r. 1, provides that all such proceedings are now to be known as actions.

The terms "cause," "suit," and "action" are defined as follows in the Judicature Act, 1873, s. 100: "'Cause' includes any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown; 'suit' includes an action; 'action' means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of Court, and does not include a criminal proceeding by the Crown; 'matter' includes every proceeding in the Court not in a cause."

It will, therefore, be seen that all civil proceedings in the High Court are now divisible into actions and matters. See WRIT OF SUMMONS; PENAL ACTIONS.

Actionum genera maxime sunt servanda (*Lofft. Max.* 160) (Every action must be in the proper form). This maxim applied to the rules governing the forms of action before the Judicature Acts. See ACTION ON THE CASE.

Actio personalis moritur cum persona (*Noy, Max.* 20). (A personal action dies with the person.) At the present time this maxim is limited to actions of tort and does not apply to personal actions founded on contract. The maxim now means that rights of action arising out of torts are in general destroyed by the death of either the injured or the injuring party. Thus an action for libel, slander, false imprisonment or assault, cannot be brought after the death of either party. But an action may be maintained by the personal representatives of a deceased person in respect of an injury to his property during his lifetime; and an action lies against them for wrongs committed by him in respect of his property. So also, under the Fatal Accidents Act, 1846 (Lord Campbell's Act), an action can be maintained by the personal representatives of a deceased person whose death was caused by the wrongful act, neglect, or default of another; and under the Workmen's Compensation Act, 1906, the right of a dependant of a deceased workman to make a claim and bring proceedings under that Act passes to the personal representative of a sole dependant who has died without making a claim. It may be stated generally that, in the event of the death of the injured person, the maxim applies only in the cases of torts to the reputation of the injured person and of torts to the person of the injured person which did not cause his death, whereas, in the case of the death of the injuring person, the right of action survives only where there was injury to property.

Actio quaelibet it via sua (*Jenk. Cent.* 77). (Every action follows its prescribed course.) This maxim is used with reference to a case, tried in the year 1409, where the question was whether the now obsolete writ *de libertate probanda* was properly delivered to a sheriff before the return of another equally obsolete writ *de nativo habendo*.

Act of Attainder. See ATTAINDER.

Act of Bankruptcy. A debtor commits an act of bankruptcy:—

(a) If he makes an assignment of any of his property for the benefit of his creditors generally.

(b) If he makes a fraudulent transfer of any part of his property.

(c) If he makes any disposition of any part of his property which amounts to a fraudulent preference.

(d) If, with intent to defeat or delay his creditors, he leaves, or stays out of, England or departs from his dwelling-house or otherwise absents himself, or begins to keep house (q.v.).

(e) If execution has been levied against him under process in any action in any court or in civil proceedings in the High Court and the goods have either been sold or held by the sheriff for twenty-one days: but if an interpleader (q.v.) summons is taken out, the time between its issue and the date on which the sheriff is ordered to withdraw or on which the summons is disposed of, is not counted as part of the twenty-one days.

(f) If he files a declaration of inability to pay his debts or presents his own petition in bankruptcy.

(g) If a creditor who has obtained any final judgment or order against him duly serves him with a bankruptcy notice, and he does not comply with such notice or satisfy the Court that he has a cross-claim equal to or exceeding the sum due under such judgment or order.

(h) If the debtor gives notice to any creditor that he has suspended, or is about to suspend, payment of his debts (Bankruptcy Act, 1914, s. 1).

Act of God. This means an event which happens independently of human action; such as death from natural causes, storm, earthquake, etc. The expression is used in the law of real property; there a tenancy in tail after

possibility of issue extinct is said to be created by the act of God, for it cannot be created by any act of man, such as a divorce, and can be created only by the death of the husband or wife of the tenant in tail: but it is now used chiefly in the law of insurance and with reference to contract and tort.

In the law of insurance, the insurer is not liable to indemnify the insured against the act of God; and the same rule applies to a common carrier.

As regards the law of contract, the act of God is a defence to an action for breach of contract only when the occurrence relied on as an act of God is one which was in fact not provided for by the contract. Thus, where a lessee of land covenants to leave the timber thereon in as good a plight at the end of the lease as it was at the beginning, and the timber is destroyed by a storm, the lessee is not bound by his covenant.

In the law of torts, a person may be held not liable for damage caused indirectly by his agency but directly by the act of God. Thus, where a man made a reservoir by damming a stream and used all proper and reasonable care in making and maintaining the dam, he was held not liable for injury to the land of another when the dam was burst by extraordinary rainfall.

When the law creates a duty, and the party bound to perform it is prevented from so doing by the act of God, he is not liable for its non-performance.

Act of Indemnity, an Act passed to legalise transactions which, when they took place, were illegal, or to exempt particular persons from pecuniary penalties or punishments for acts done in the public service which technically were breaches of the law. Such Acts have been passed from time to time to justify the action of military authorities in exercise of martial law (q.v.) or to relieve peers from penalties for having inadvertently voted in the House of Lords without having taken the oath: and for many years preceding the abolition of tests (q.v.) for municipal offices, an Act of Indemnity was passed annually to relieve dissenters who had accepted office.

Act of Oblivion. This is the popular title of the statute 12 Car. 2, c. 11, which, except as regards certain persons named therein, gave a general indemnity for all illegal acts done during "the late interruption of government," i.e. from the beginning of the rebellion against Charles I. to the restoration in 1660 of Charles II.

Act of Parliament. Acts of Parliament are generally, and until 1911 were invariably, made by the Sovereign with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled. Now, under the Parliament Act, 1911, an Act can be passed by the Sovereign and the Commons without the concurrence of the Lords, in the circumstances set forth in the Act.

The royal assent to a bill is given either by the King personally or by commission. If given by commission, assent can be given only to the bills named in the schedule to the commission. Assent is signified by the words, "*Le Roy le veult*," or, in the case of money bills, by the words "*Le Roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*" In the now almost inconceivable event of the royal dissent, the words, "*Le Roy s'avisera*" would be used.

An Act comes into force on the day that it receives the royal assent, unless some other date is expressly provided. The day on which an Act comes into force includes the whole period from the end of the last preceding day. Acts are either public or private. All Acts passed since 1850 are to be deemed public Acts, and are to be judicially noticed as such, unless the contrary is expressly provided by the Act (Interpretation Act, 1889, s. 9), the effect of which is that they need not be pleaded or proved.

Public Acts are divided into general Acts, which affect the whole community or a considerable part of it; local Acts, which relate to a particular area; and personal Acts, relating to the incorporation of trading bodies, etc.

Since 1868, local and personal Acts have been printed in a series of volumes separately from the general Acts and from private Acts, and Roman figures are used to indicate the number of the chapter (e.g. 20 & 21 Vict. c. xci.), whereas in general Acts Arabic figures (e.g., 44 & 45 Vict. c. 9) are used.

Private Acts relate to the affairs of individuals. They are divided into (a) those that are printed for sale, and (b) those that are not printed for sale. Private Acts which have been printed for sale are proved by the production of a King's printer's copy, or of a copy printed otherwise under his Majesty's authority, or under the authority of his Majesty's Stationery Office. Private Acts which have not been printed for sale are proved by an exemplification (q.v.) transcript (q.v.), or copy of the original from the Record Office or Clerk of the Parliaments (q.v.).

There is also a class of Acts which may be placed midway between public and private

Acts, namely, those which contain clauses required to be inserted in private Acts of frequent occurrence. For the sake of uniformity, and to avoid the necessity of repeating such clauses in each private Act, the clauses are set out in a general Act, so that when a private or special Act relating to the matter in question is passed, the general Act is incorporated with it. Thus the Lands Clauses Consolidation Acts, 1845, 1860 and 1869, contain the "provisions usually inserted in Acts authorizing the taking of lands for undertakings of a public nature," such as provisions for ascertaining the value of land purchased under compulsory powers, for payment of the purchase-money into Court where the parties entitled to it are under disability, etc. Other Acts of a similar nature are the Companies Clauses Acts, 1845 and 1863, the Railways Clauses Acts, 1845 and 1863, the Commissioners Clauses Act, 1845, the Harbours, Docks and Piers Clauses Act, 1847.

A private Act which is not judicially noticed must be pleaded in any proceeding in which it is relied on as grounding either a claim or a defence.

Act of Settlement, the short title of the statute 12 & 13 Will. 3, c. 2, which enacted that, after the death of William III. and of the Princess Anne (afterwards Queen Anne) and in default of issue of either of them, the crown should descend to Sophia, Electress of Hanover and the heirs of her body, being Protestants.

The other more important provisions of the Act were:—

(a) That the sovereign shall be a member of the Church of England as by law established and shall vacate the throne on becoming or marrying a Roman Catholic.

(b) That judges should hold office during good behaviour and be paid fixed salaries, but might be removed from office on the address of both Houses of Parliament.

(c) That no pardon under the Great Seal of England should be pleadable to an impeachment (q.v.), that is to say, should prevent anyone from being impeached.

The provision as to judges has been, in effect, re-enacted by the Judicature Act, 1875, s. 5, and was, therefore, subsequently repealed The Lord Chancellor, who was never in point of law a judge, has been specifically excepted from s. 5 of the Judicature Act, 1875.

Act of State. This is an act done by the sovereign power of a country or its agent, within the limit of the power vested in it. Such an Act cannot be questioned or made the subject of legal proceedings in any Court of law. See COLONIAL GOVERNORS.

Act of Supremacy. This is the popular title of the statute 1 Eliz. c. 1, passed in 1558 to establish the supremacy of the Crown in ecclesiastical matters. It prescribed for all spiritual and temporal officers a supremacy oath, for which another was substituted by the statute of 1 Will. & M. c. 8, s. 12. The substituted oath was continued by the statute 21 & 22 Vict. c. 48, s. 1; and it was finally replaced by the oath prescribed by the Promissory Oaths Act, 1868, s. 2, which, in accordance with the Clerical Subscription Act, 1865, must be taken by every clergyman before ordination or institution, and by every bishop or archbishop before confirmation (see CONGÉ D'ELIRE).

Act of Uniformity. This is the popular title of the statute 14 Car. 2, c. 4, passed in 1662 to regulate public worship.

Act of Union. As regards Wales, this term may be applied to the statute 27 Hen. 8, c 26, passed in 1536, by which Wales was for the first time incorporated with and united into England and was made subject to the English law. The earlier *Statutum Walliæ*, 12 Edw. 1 (1284), had made Wales only feudally subject to the English kings and had not entirely abrogated Welsh law.

As regards Scotland, the term means the Union with Scotland Act, 1706, 5 Anne, c. 8.

As regards Ireland, the term means the Union with Ireland Act, 1800.

Acton Burnel, Statute of. This statute (4 Edw. 1) is also known as the *Statutum de Mercatoribus*. It was passed in 1283 by the King and his council, in the assembly known as the Parliament of Shrewsbury (or Acton Burnel), after its provisions had been discussed by certain representatives of the Commons who had been summoned to the assembly. The Commons, however, had no part in the actual passing of the statute. The statute was intended to give merchants a speedy remedy for the recovery of their debts; but this was not effective until the enactment of the statute of 13 Edw. 1, c. 18 (Westminster II.) known as the *Statutum Mercatorum*. The Statute of Acton Burnel established the Statute Merchant (q.v.). The later CARTA MERCATORIA (q.v.) applied to foreign merchants.

Actor, a term, borrowed from the Roman law, which formerly was used to denote the person who had the active claim in a judicial proceeding, e.g. a plaintiff, or a claimant, or a demandant under the old practice. So, in

an action of replevin, although the person who actively claimed the distress (the distrainor) was in point of form the defendant, he was regarded as actor equally with the plaintiff who was in possession of the goods distrained and merely resisted the defendant's claim for their return.

Actor sequitur forum rei (*Branch, M.* 4). (A plaintiff must sue in the jurisdiction to which the defendant is subject.) But this maxim is subject to many qualifications.

Actore non probante absolvitur reus. (When the plaintiff does not prove his case, judgment is for the defendant; when the prosecution does not prove its case, the accused is acquitted.) *Reus* in old law Latin meant, in civil proceedings, the defendant, and, in criminal proceedings, the accused.

Actori incumbit onus probandi (4 *Rep.* 71 b). (The burden of proof is on the plaintiff or prosecution.) But the burden may shift during the course of the proceedings. See BURDEN OF PROOF.

Actori incumbit probatio (*Hob.* 103). (He who affirms must prove.) This burden of proof is on the plaintiff or the prosecution.

Actual Bodily Harm. This expression occurs in s. 47 of the Offences against the Person Act, 1861. It includes any hurt or injury, whether permanent or otherwise, which interferes with the health or comfort of the person assaulted. It need not amount to "grievous bodily harm," which is dealt with in ss. 11, 18, and other sections of the same statute.

The expression is also used in the Children Dangerous Performances Acts, 1879 and 1897. See BODILY HARM.

Actual Entry. A person has made an actual entry on land as soon as he has any part of his body thereon. If actual entry be prevented by violence or fear of violence, he makes an entry in law by approaching as near as he can and then making his claim; and by so doing he is held to have made an actual entry. Actual entry converts a seisin in law into a seisin in deed. See SEISIN.

Actual Military Service. A soldier on actual military service may, under the Statute of Frauds (29 Car. 2, c. 2), s. 22, and the Wills Act, 1837, s. 11, make a nuncupative or other informal will (see WILLS), even though he is under the age of twenty-one (Wills (Soldiers and Sailors) Act, 1918, s. 1). It would seem that a female nurse in the employment of the War Office is within these enactments. Actual military service does not mean only service in the army. It means service in or connected with operations of war.

Actual Possession. When any person, whether himself or by an agent, enters, in assertion of his right, into possession of lands to which he is entitled, the law immediately vests the actual possession in him. If two persons, each in the exercise of his alleged right, enter, then whichever of them may be entitled to possession is in actual possession and the other is a trespasser.

Actual Total Loss. Defined by s. 57 of the Marine Insurance Act, 1906.

Actuary. In ecclesiastical law, this means the registrar of the Lower House of Convocation. See CONVOCATION.

Ordinarily, an actuary means one who is skilled in calculating the value of life interests, reversions, policies of assurance, annuities, etc. The Institute of Actuaries was formed in 1848 and was incorporated by royal charter in 1884.

Actus curiae neminem gravabit (*Jenk. Cent.* 118). (The act of the Court hurts no one): which means that the Court will remedy any inconvenience caused to suitors by its rules of procedure.

Actus Dei nemini facit injuriam (*Lofft. M.* 102). (The law holds no man responsible for the act of God.) As to the application of this maxim, see ACT OF GOD. In 5 *Rep.* 87 a, Lord Coke said: "The death of the defendant is the act of God, which shall not turn to the prejudice of the plaintiff."

Actus Dei nemini nocet. (No one is to be prejudiced by the act of God.) But this maxim is not of universal application. Thus, where a prisoner was on trial for a capital offence and one of the jury became incapacitated by illness so that the jury had to be discharged, it was argued that the prisoner ought not to be put on trial again, but a fresh jury was empanelled and convicted the prisoner: see 4 *Taunt.* 412.

Actus inceptus cujus perfectio pendet ex voluntate partium revocari potest: si autem pendet ex voluntate tertiae personae vel ex contingenti, revocari non potest (*Bac. Max. Reg.* 20). (A transaction begun, but not completed, may be cancelled if its completion depends on the mutual consent of the parties; but it cannot be cancelled if its completion depends on the consent of a third party or on a contingency.)

Actus judiciarius coram non judice irritus habetur: de ministeriali autem a quocunque provenit ratum esto (*Lofft. Max*, 458). (When an act is done without or in excess of jurisdiction, the act will be invalid if it is a judicial act, but, if it is a ministerial act, the question

as to whether it is valid or invalid depends on circumstances.)

Actus legis nemini est damnosus (2 *Inst.* 287.) (An act in the law shall prejudice no man.)

Actus legis nemini facit injuriam. (*Bac. Abr. Trespass (B)*). (No man is wronged by an act of the law.) See *Co. Litt.* 379 *a*, [1894] 3 *Ch.* 175.

Actus legitimi non recipiunt modum (*Hob.* 153.) This maxim occurs in the report of the "Great Case of the Commendam" argued in the Exchequer Chamber in 1612; . . . "The acts of Presentation, Institution and Induction are all authorities given by Law, and must be executed according to the form prescribed by Law and cannot be modified; for *Actus legitimi non recipiunt modum.*" The maxim means that when the doing of anything in a particular manner is sanctioned by the law, then the thing cannot be done in a different way. A sentence of death by hanging will not justify electrocution.

Actus me invito non est meus actus. (What I do is not my act at all when my will does not concur.) This means, for instance, that an act cannot be criminal unless the will of the person who does the act freely concurs in the doing of the act, and that a will, deed, or contract is invalid if made under compulsion. But as regards deeds or contracts, compulsion does not include compulsion by the law.

Actus non facit reum, nisi mens sit rea (3 *Inst.* 107.) (The intent and the act must both concur to constitute a crime.) But the concurrence which is necessary varies in different cases. Thus, if A unlawfully and of malice aforethought fires at B with intent to kill him, but misses B and kills C, A is guilty of the murder of C, even though A had no intention whatever to kill C. And where a publican supplies drink to a drunken person he is guilty of an offence even though he did not know that the person was drunk; for the enactment creating the offence absolutely forbids a publican to supply drink to any person who is in fact drunk. Compare IN CRIMINALIBUS, ETC.: VOLUNTAS IN, ETC.

Ad colligenda bona. See GRANT.

Adcredulitare. In Anglo-Saxon times, this meant to purge oneself of an accusation by oath; compare ADLEGIARE.

Ad damnum, that part of the old declaration—now statement of claim (q.v.)—which commenced with the words "to the damage, etc.," was called the breach and sometimes the breach *ad damnum.*

Ad diem, on the day [appointed].

Addition. This means, in law, the address and occupation or rank of a person, as given in a deed or other legal document after his name.

Address for Service. Where the plaintiff in an action (if he appears in person), or his solicitor (if he appears by solicitor), resides or carries on business at a place more than three miles from the Courts of Justice, the writ of summons (if issued out of the Central Office) must be indorsed with a proper place, to be called his address for service, not more than three miles from the Courts, where writs, notices, summonses, orders, etc., may be left for him; and where the writ is issued out of a district registry, it must be endorsed with a like address within the district (Ord. IV., rr. 1, 2, 3; which—see rule 4—apply also to any document, other than a writ, which originates proceedings). So also, a memorandum of appearance, if entered at the Central Office, must state an address for service within three miles of the Courts of Justice, or, if entered at a district registry, an address for service within the district; see Ord. XII., rr. 10, 11.

Ad ea quae frequentius accidunt jura adaptantur (2 *Inst.* 137). (The laws are adapted to these cases which more frequently occur.) If a case occurs which is not provided for by a statute, it must be dealt with according to the law existing before the statute was passed.

Compare JUS CONSTITUI, ETC.

Ademption. This means the complete or partial extinction or withholding of a legacy (but not of a devise of real estate) by some act of the testator during his life other than revocation by a testamentary instrument, or otherwise, as is provided by the Wills Act, 1837.

As to the several kinds of legacies, see LEGACY. A general legacy, if given to a child by a parent or by one *in loco parentis*, is liable to ademption if, and in so far as, a portion is given to the child subsequently to the execution of the will; but a general legacy to a stranger is not liable to ademption unless it is declared to have been given in discharge of some moral obligation and such obligation is subsequently discharged in whole or in part before the death of the testator, in which latter case the law will presume that the testator did not desire to discharge the obligation more than once.

Specific legacies are adeemed if the specific thing bequeathed ceases to belong, and does not again come to belong, to the testator before his death.

Demonstrative legacies are not liable to ademption by reason of the fund out of which payment is directed not being assets of the

testator at his death, unless such fund is declared to be the only fund for payment. If given to a child, they are probably liable to ademption in so far as a portion has been subsequently paid to the child. And if given to a stranger in discharge of a moral obligation, they are liable to ademption if and in so far as such obligation has been discharged during the lifetime of the testator.

As to ademption by satisfaction, see SATISFACTION.

Ad feodi formam, to fee farm.

Ad filum. See AD MEDIUM FILUM.

Ad idem. Parties to a contract are said to be *ad idem* when each of them has a distinct intention in common with the other or others. Unless they are *ad idem* there is no contract.

Ad inquirendum, to enquire. There were a large number of writs *ad inquirendum*, which were used to make enquiry regarding matters relating to causes pending in the King's courts, such, for instance, as the writ *ad inquirendum si mulier legitime copulata matrimonio* (to make enquiry whether the woman is lawfully married) directed to a bishop.

Adiratus. In the time of Bracton, this meant pecuniary compensation for stolen goods.

Adjective Law. In jurisprudence, this means so much of the law as relates to practice and procedure; whereas substantive law means the law which is administered by the Courts. The terms were first used by Bentham.

Adjoining Owners. Every owner of land is entitled to receive from the adjoining land such support for his land as is sufficient while it is in its natural state, that is to say, while it is without buildings on it; and an action lies if land collapses by reason of being deprived of such support.

The owner of land is under no obligation so to fence it as to keep out his neighbour's cattle. The owner of cattle is under a duty to keep them from trespassing.

The owner of land which is overhung by trees growing on his neighbour's land is entitled, without notice, if he does not trespass on his neighbour's land, to cut the branches so far as they overhang, though they have done so for more than twenty years; and if his crops are damaged by such overhanging, he can recover damages from his neighbour.

No action lies for injury to a man's cattle in consequence of their eating the branches of trees growing on his neighbour's land, unless the branches project over the land of the man whose cattle are injured. And an owner of land who neglects to cut thistles growing thereon in such time as to prevent them from seeding is not liable for damage caused by the seeds being blown on to his neighbour's land.

Where the boundary between the lands of different owners consists of a hedge and a ditch, it will, in the absence of evidence to the contrary, be presumed that the ditch, if artificial, belongs to the man on whose land is the hedge; but if the ditch is a natural watercourse, it is doubtful whether such presumption arises.

Adjournamentum est ad diem dicere seu diem dare (4 *Inst.* 27). (Adjournment is to appoint a day or give a day). This is a mere definition of the adjournment, as distinguished from the prorogation, of Parliament.

Adjournment. This means a putting off to another day. It usually is to some fixed day, but the adjournment may be *sine die*, that is to say, indefinite.

Either House of Parliament can adjourn a debate or adjourn a sitting: a Court can be adjourned; the hearing of a case can be adjourned; and the term is also used in connection with public meetings, meetings of companies, etc.

Adjudication is the judgment or decision of a Court. The term is principally used in bankruptcy proceedings, the adjudication being the order which declares the debtor to be bankrupt. See BANKRUPT; BANKRUPTCY.

Adjudication Stamp. Under s. 12 of the Stamp Act, 1891, the Commissioners of Inland Revenue may be required by any person to decide what, if any, stamp duty is chargeable upon any written document, and shall either stamp it with a stamp denoting that no duty is chargeable or assess the duty; and in the latter case the document may be stamped with a particular stamp denoting that it is duly stamped. Any stamp affixed in pursuance of this enactment is termed an adjudication stamp.

Adjuncts. See DELEGATES.

Ad jura regis, a writ which lay for a clerk against anyone who sought to eject him from a living to which he had been presented by the King.

Adjustment, in the law of marine insurance, is the operation of settling and ascertaining the amount which the assured, after allowances and deductions are made, is entitled to receive under the policy, and of fixing the proportion which each underwriter is liable to pay. Similarly, adjustment of average is the process of calculating the values at which the articles which are to contribute are to be taken. The rule now adopted in England is to value the goods sacrificed, as well as the goods saved, at

their selling price, if the ship arrives at her port of destination, and the valuation is made there; but if she puts back to her lading port, and the average is adjusted there, the invoice or cost price is taken, no other being well ascertainable. (See AVERAGE.) When the port of destination is a foreign port, the adjustment which is made there is known as foreign adjustment.

Ad largum, at large (q.v.).

Adlegiare. In Anglo-Saxon times this meant to clear oneself of an accusation by oath; compare ADCREDULITARE.

Admeasurement. Admeasurement of dower was a writ—now obsolete—brought by an heir against the widow of an ancestor who was alleged to withhold more land for her dower than she was entitled to. In such a case, the person aggrieved was entitled to have her proper share of the land ascertained by the sheriff.

Admeasurement of pasture was a writ—now also obsolete—brought by one commoner against another commoner alleged to have put more beasts on the common than was lawful. In this case a jury was summoned to ascertain the rights of the parties and of the commoners generally.

It is not clear that either of these writs has ever been abolished.

Dower (q.v.) is now of little practical importance. As regards common, the modern substitute for the writ of admeasurement would be an action for damages. See SECUNDA SUPERONERATIONE.

Ad medium filum viae (or **aquae**). Where the boundary between the lands of different owners is a road or a non-tidal river, each of such owners is presumed, in the absence of evidence to the contrary, to own the road or river up to an imaginary line or thread (*filum*) drawn along the centre of the road (*via*) or river (*aqua*), subject, in the case of the road, to the rights of the public and of local authorities in respect of its use and maintenance as a highway. But, although a railway is, in point of law, a highway, this rule does not apply where the boundary is a railway.

Where a road or a non-tidal river is the boundary between two counties, parishes, etc., each is presumed to have control up to the middle line.

Ad melius inquirendum, a writ by which in certain cases a further inquisition or inquiry is directed, if the first has been unsatisfactory. It was formerly the means by which the holding of a second inquest by a coroner was directed; but now recourse is had to an order of the Court under the Coroners Act, 1887, s. 6 (1) (*a*). The writ may at any time be awarded by the Lord Chancellor or on the fiat of the Attorney-General, under the Escheat Procedure Act, 1887, and the rules made thereunder, in any case of escheat.

Admensuratione, de, the writ of admeasurement (q.v.) of dower.

Administration. This means the getting in and distribution of the assets (q.v.) of a deceased person by the executor or administrator of such person or by the Chancery Division. An executor acts under a grant (q.v.) of probate; and an administrator acts under a grant of letters of administration. It also means the carrying out of the duties imposed by a trust. If any person is sentenced to death or penal servitude, the Crown may appoint a person to manage the property of the convict until he or she shall die or receive the royal pardon or have suffered the full punishment under such sentence or any commutation thereof (see the Forfeiture Act, 1870, ss. 6, 7, 9-20). What is done under such appointment may be termed administration.

The body of ministers now known as the Cabinet was formerly, and sometimes still is, colloquially known as the Administration.

Administration Action or Matter. This is an action or matter in the Chancery Division to secure the due administration of the estate of a deceased person: it is instituted either by some person, such as a creditor, seeking to enforce his rights, or by a trustee, or executor, or administrator who feels that he cannot safely act except under the directions of the Court. It is commenced either by writ of summons (q.v.) or by originating summons. Procedure by writ of summons is more expensive than that by originating summons, and where a plaintiff proceeds by the former method in a case where the latter is available, he may be ordered to pay the costs of the difference. As to the cases in which an originating summons can be taken out, see R. S. C. Ord. LV., rr. (3), (4), and notes thereto in the *Annual Practice;* and as to who is to be served with the summons, see r. 5 of the same order.

Administration Bond. This is the bond, with (unless securities are dispensed with) one or more sureties, which must be given, in double the amount under which the assets of a deceased person are sworn, by any person (other than the Solicitor to the Treasury, or the Solicitor for the Duchy of Lancaster, acting for the Crown) to whom letters of administration are granted (see the Court of Probate Act, 1857,

ss. 81, 82). No such bond is required from an executor.

Administration, Letters of. This is the authority which an administrator, or administratrix, receives from the Probate, Divorce, and Admiralty Division to administer (see ADMINISTRATOR) the estate of a deceased person. See GRANT.

Administrative Business. Certain of the business transacted by justices at quarter sessions prior to the enactment of the Local Government Act, 1888, is in s. 3 of that Act set forth and described as "administrative business" and was by the same section transferred to county councils. This is the business referred to in s. 46 of the same Act as administrative business.

The part of the business of the Chancery Division which relates to the execution of the trusts of deeds and wills is known colloquially as administrative business.

Administrative County. This means the area for which a county council is elected (Local Government Act, 1888, s. 100).

Administrative Vestries. The London Government Act, 1899, s. 34, enacts that, for the purposes of that Act, the expression means "a vestry having the powers of a vestry elected for a parish specified in Schedule A to the Metropolis Management Act, 1855."

Administrator. The person to whom letters of administration (q.v.) are granted is known as an administrator. The real as well as the personal property of the deceased now vests in the administrator (see EXECUTOR). He is appointed where the deceased either has died intestate or has named no executor in his will, or where there is a will but no executor named in the will is able or willing to act, in which last-mentioned case the administrator obtains a grant with the will annexed (*cum testamento annexo*). See GRANT.

The person appointed by the Crown to administer the estate of a convict (see ADMINISTRATION) is also known as an administrator.

Administratrix, a woman to whom letters of administration have been granted. See ADMINISTRATOR; ADMINISTRATION.

Admiral. In early times there was an officer entrusted by the Crown with the charge of the seas. He was known as *custos maris* or as *locum tenens regis super mare*. At the time of the Crusades the title of admiral—derived from Arabic words—came to be applied to him. He had a deputy known as the vice-admiral of the coast. In the reign of Edward I. there seem to have been admirals for each of the four seas (q.v.). None of these officers, down to the reign of Edward III., seem to have exercised any judicial functions. They were admirals only for naval purposes. But in the reign of Edward III. we find the Court of the Admiral established. The Court was held before the lieutenant or deputy of the admiral or, afterwards, of the Lord High Admiral, or of the commissioners for executing the office of the Lord High Admiral. The civil jurisdiction of the Admiralty Court, which finally became the High Court of Admiralty in England, is, since 1875, vested in the Probate, Divorce and Admiralty Division (q.v.). of the High Court, while the former criminal jurisdiction of the Court is now vested in the various Courts for the trial of indictable offences. The admiral had by 1408 developed into the "admiral of the fleet and admiral of England, Ireland, and Acquitaine"; and later we find that he has become the Lord High Admiral. Since the restoration of Charles II., the only Lord High Admirals have been James Duke of York; the Earl of Pembroke, under William III.; Prince George of Denmark, under Queen Anne; and the Duke of Clarence, assisted by a council, under George III. Since 1827 the Lord High Admiral has disappeared, but the council has remained in the form of the commissioners for executing the office of the Lord High Admiral. The office had first been put in commission in 1632, and since the Revolution of 1688 it has been continuously in commission, except during the short periods for which there has been a Lord High Admiral.

In ancient times the Crown sometimes made grants to persons designated admirals, under which they exercised admiralty jurisdiction, within specified areas, independently of the Lord High Admiral. Under these grants, no rights now remain except rights to what would otherwise be *droits* of Admiralty (q.v.) found within their jurisdiction; and even this does not include *droits* consisting of enemy goods found within such jurisdiction on an outbreak of war, nor, it would seem, other *droits* unless actually ashore or aground.

The word "admiral" is now used only to describe naval officers of high rank, the first being admirals of the fleet, after whom come admirals, vice-admirals, and rear-admirals. (See VICE-ADMIRALTY COURTS.)

Admiralty, The. This means "the Lord High Admiral of the United Kingdom [see ADMIRAL] for the time being or the commissioners for the time for executing that office" (Interpretation Act, 1889, s. 12 (4)). The commissioners are known as the Lords Commissioners of the Admiralty, and consist of the First Lord (always

a member of either the House of Lords or the House of Commons), who ranks as a principal Secretary of State and is always a member of the Cabinet (q.v.) and who is responsible to the Crown and to Parliament for the Navy and the Royal Marines, four naval officers, known as the "Sea Lords," and a Civil Lord. These six commissioners, together with a Parliamentary Secretary, who, like the First Lord, is always a member of one House of Parliament or the other, and a Financial Secretary, form the Admiralty Board which administers and controls the Navy and the Royal Marines.

Admiralty Action. This expression includes every action which may be tried in the Admiralty Division, whether, while the Admiralty Court existed, such action was triable only in that Court or either in that Court or in the Common Law or Chancery Courts.

The Admiralty Court had exclusive jurisdiction as to salvage; life salvage; bottomry; necessaries supplied to foreign ships.

The Admiralty Court and the Common Law or the Chancery Courts had concurrent jurisdiction as regards collision; damage to person or property caused by ships; damage to cargo carried in any foreign ship to any English port; towage; wages and pilotage earned by master seamen or pilots; disbursements by a master; mortgage, in actions by mortgagees of a ship if she is under process of the Court; questions as to the title to ships or their ownership or management.

The distinctive process of the Court of Admiralty was the process *in rem*, under which the property which had given rise to the cause of action was arrested and held by the Court to satisfy the plaintiff. The Court had inherent power to exercise jurisdiction *in personam* in certain cases of injury to person or property on the high seas and also where, as in the case of a vessel which is sunk, there was no *res* available.

As to process *in rem*, see ARREST. Certain Admiralty actions and matters are within the jurisdiction of some of the County Courts where the amount involved does not exceed a certain sum: see the County Courts (Admiralty Jurisdiction) Act, 1868, and the County Courts (Admiralty Jurisdiction) Act, 1869.

Admiralty Division. This is a division known as the Probate, Divorce and Admiralty Division of the High Court. As its name indicates, it deals with probate and divorce as well as with admiralty matters. As regards admiralty matters, it has all the jurisdiction formerly exercised by the High Court of Admiralty (see ADMIRAL). Since its creation in 1875 under the Judicature Acts, it has received jurisdiction in cases under the Slave Trade Act, 1873, and under the Pacific Islanders Protection Acts, 1872 and 1875. By the Judicature Act, 1891, s. 4, the jurisdiction in prize of the Admiralty Court, which had vested in the High Court in 1875, was assigned to the Division; all business within the jurisdiction of the High Court under the Mail Ships Acts, 1891 and 1902, has, by rules made under those Acts, been assigned to it; by the R. S. C. (Merchant Shipping), 1894, r. 1, the jurisdiction of the High Court under the Merchant Shipping Act, 1894, with the exception of that under ss. 28 and 30 and under s. 504 (as amended and extended by subsequent enactments) was assigned to the Division; and, under r. 3 (1) of the same rules, the Admiralty Registrar exercises all jurisdiction under s. 197 of the Merchant Shipping Act, 1894.

Admiralty, Droits of. When a state of war exists, enemy goods seized in English ports go to the Crown as *droits* of Admiralty.

Subject to the rights of the Lord Warden and Admiral of the Cinque Ports, and of lords of manors, and of certain persons (see ADMIRAL) who held under Crown grant Admiralty rights within defined parts of the coast, the Lord High Admiral (see ADMIRAL) formerly had custody of all ships, boats or cargoes found derelict upon the high seas and of all flotsam (q.v.), jetsam and lagan, which, subject to their not being claimed by an owner and to the rights of salvors, were condemned by the Court of Admiralty as *droits* of Admiralty. This jurisdiction of the Court of Admiralty is now vested in the Admiralty Division; but is now not exercised, as the things to which it relates (included in the term "wreck" in s. 510 (1) of the Merchant Shipping Act, 1894) are now, under s. 518 of that Act (as extended by s. 72 of the Merchant Shipping Act, 1906), if found or brought within the territorial waters of the United Kingdom, dealt with under ss. 523-5 of the Merchant Shipping Act, 1894, which provide that such things, if unclaimed by the owner or by a holder of a Crown grant or by a lord of the manor, shall be sold and the net proceeds paid to the Crown.

Admission. This, in ecclesiastical law, is where the bishop, upon examination of a person presented to a benefice within his diocese, approves of him as a fit person. It is sometimes used as meaning not merely such approval, but also the institution (q.v.) of the person approved of.

Admission (in Criminal Cases). This means

any statement by an accused person admitting the offence with which he is charged, or admitting any fact tending to prove that he is guilty. It also means any assent, whether by words or conduct, given by the accused to any statement made in his presence relating to any material fact which is within his knowledge. No statement made by a prisoner is admissible against him if it was made as the result of any inducement, threat, or promise emanating from a person in a position of authority over the accused as regards the offence charged, and relating to that offence. Any assent by the prisoner to any statement made in his presence is also inadmissible if obtained by means of any such inducement, threat, or promise.

A free and voluntary statement made, not in reply to questions, by an accused person to a police officer is admissible, whether made before, on, or after arrest. If a statement is made after the accused has been cautioned, that is to say, after he has been told that he need not say anything and that anything which he does say may be used against him, it is admissible, whether made before, on, or after arrest, even though it is made in reply to questions by a police officer.

The fact that an accused person did not contradict a statement made in his presence is not admissible unless the circumstances were such that the accused might reasonably be expected to contradict the statement if the statement were untrue. To make such statement admissible, it must, in fact, be shown that the prisoner, by his silence, conduct, or demeanour, or by any words which he used, practically admitted the truth of the statement, or of some part of it.

Admissions (in Civil Proceedings). This means the facts which either party to an action admits, or is taken to have admitted, in the course of the pleadings.

All allegations in the pleadings which are not specifically denied are taken to have been admitted (Ord. XIX., r. 13). If money is paid into Court, without a denial of liability, under Ord. XXII., there is taken to be an admission that something, not exceeding the amount paid in, is due. Under Ord. XXXII., any party can call upon the opposite party to admit any document or fact which is material: and, in general, no party will be allowed the costs of proving any such document or fact unless the opposite party has been called upon to admit it. Under Ord. XXX., r. 7, the judge may direct a defendant to admit matters which are not really in dispute. Admissions may also be obtained by means of answers to interrogatories (q.v.). Where admissions of fact have been made, the plaintiff may at any stage apply for and obtain such judgment as he may be entitled to thereon (Ord. XXXII., r. 6).

Admit; Admittance. The lord of a manor is said to admit a person as tenant of copyhold lands forming part of the manor when he accepts him as tenant of those lands in place of the former tenant, e.g. on the surrender, devise, or death intestate of the former tenant: in the last case, it is called admittance on descent. In theory, the lord admits the surrenderee, devisee, or heir as a favour, and hence in the enrolment of an admittance on the court rolls it is stated that the surrenderee "prays to be admitted"; but, in fact, the lord is bound to admit the new tenant if his claim is in accordance with the custom of the manor; and hence an admittance in such cases is opposed to a voluntary admittance, which takes place where the lord makes a voluntary grant. (See SURRENDER; GRANT.) Admittance may be either express or by implication. Express or formal admission is generally performed by the steward of the manor delivering a rod, straw, glove, or other symbol representing the seisin of the land, to the new tenant; and the admittance is then enrolled on the court rolls. Formerly, admittances could only be made in court, i.e. in the customary court of the manor (see COURT BARON), but (see the Copyhold Act, 1894) this is no longer the case. Admittance by implication is where the lord does some act showing an intention of accepting the new tenant (e.g. by receiving rent from him), or where the admittance of one tenant operates as the admittance of another; thus the admittance of a particular tenant may operate as the admittance of a tenant in remainder. (See COPYHOLD; FINE.)

Admittendo clerico, De, a writ to compel the bishop to admit a clerk to a benefice: it lay for one who had recovered in the Common Pleas the right of presentation against the bishop.

Admittendo in Socium, De, a writ under which gentlemen of position were associated with the judges in the holding of assizes.

Admonition is the first and lightest form of ecclesiastical censure, and is in the nature of a warning, which, if not obeyed, may be followed by a severer censure, e.g. suspension (q.v.). (See MONITION; CENSURE.)

In the Army an offender may be "admonished": see REPRIMAND.

Ad officium justiciariorum spectat, unicuique

coram eis placitanti justitiam exhibere (2 *Inst.* 451). (It is the duty of those who discharge judicial functions to render justice to everyone who comes before them), either as plaintiff or as defendant.

Adopt. To adopt a contract is to accept it as binding, notwithstanding some defect which entitles the party to repudiate it. Thus, when a person affirms a voidable contract or ratifies a contract made by his agent beyond his authority, he is said to adopt it. So a company may be formed for the purpose of adopting a contract entered into on its behalf. (See TRUSTEE; AFFIRM; RATIFY; VOIDABLE.)

The adoption of children is not known to English law, that is to say, a person cannot by any declaration put a stranger in the same position as a natural-born child. The only relation resembling it in our law is that between a child and a person *in loco parentis* to it. (See IN LOCO PARENTIS.)

Adoptive Act. This means an Act of Parliament depending either on the vote of some public body or on that of a particular number of voters. An Act of the first class is the Public Improvements Act, 1860, which a parish council is empowered to adopt by the Local Government Act, 1894, s. 7 (1); and the Public Libraries Acts, 1892 to 1901, which may be adopted by a majority of the voters in any urban district or in any parish which is not within an urban district, are examples of the second class.

Ad proximum antecedens fiat relatio, nisi impediatur sententia (*Jenk. Cent.* 180) (Relative words refer to the last antecedent unless the meaning of the sentence would be impaired by such construction.) The antecedent noun to which a relative is to be taken as referring is, in fact, the last noun which can be made the antecedent so as to give a meaning to the sentence. This is the general rule. But, even in the best writers, the context not infrequently shows clearly that the rule must be departed from if the real meaning of a sentence is to be gathered; and analogous departures from the rule have sometimes to be made in order to ascertain the true meaning of written instruments and even of statutes.

Ad quaestionem facti non respondent judices; ad quaestionem juris non respondent juratores (*Co. Litt.* 295). (As regards cases tried by a judge and jury, the judge does not decide questions of fact and the jury do not decide questions of law.) Thus, where the question is whether a deed is or is not valid, it is for the jury to decide whether the deed was duly sealed and delivered and whether any interlineations or erasures appearing on the face of it were effected before delivery, while, subject to the findings of the jury on such points, it is for the judge to decide whether the deed is sufficient in law. So also it is for the jury to decide as to the meaning of technical words or phrases, other than those specifically known to the law, used in any written instrument; but, subject to the finding of the jury on that point, it is for the judge to construe the instrument, and the jury must accept his construction thereof. In either civil or criminal proceedings for libel, the judge, if satisfied that the writing complained of is capable of bearing the meaning imputed, should inform the jury accordingly; but he must leave it to the jury to decide whether it does or does not bear that meaning.

But there are exceptions to the rule. Thus, questions as to reasonable cause, though strictly matter of fact, are for the judge to decide.

As regards actions, such as Chancery actions and many common law actions, which are tried by a judge without a jury, the judge must decide questions of fact as well as of law; and this applies also to proceedings in the County Court.

Compare JURATORES SUNT, ETC.; VEREDICTUM, ETC.

Ad quod damnum. A writ called by this name was formerly issued to a sheriff before the Crown granted a right to hold a fair, market, etc., within the bailiwick, or area, for which the sheriff acted. It directed the sheriff to inquire what damage might be done by such grant. The writ was also used before a licence was given by the Crown to alienate lands in mortmain; and the licence did not issue unless a return *ad damnum nullius* was made so as to show that no man would be injured. The writ was also issued before a licence to make or divert a road was given.

The writ is now wholly obsolete.

Ad terminum qui preterit, a writ of entry which lay for a lessor and his heirs when a lease had been made for a term of years or for a life or lives, and, after the expiration of the lease, the lands were withheld from the lessor or his heirs by the tenant or by some other person. The writ was abolished by the Real Property Limitation Act, 1833, s. 36.

Adulteration. This term means generally the mixing with any substance intended to be sold of any ingredient which is dangerous to health or which makes the substance some-

thing other than that as which it is sold or intended to be sold.

When adulterated food is dangerous to human health, and is sold with knowledge of that fact, the vendor commits an indictable offence; and if the adulteration and sale involve a false pretence, he may be indicted for obtaining money by false pretences, or for the common law misdemeanour known as a cheat.

The adulteration of meal flour or bread is specially dealt with in the Bread Act, 1836, s. 37, and, as regards the area within ten miles of the Royal Exchange, London, by the London Bread Act, 1822, 2 Geo. 4, c. cvi.; that of beer, in the Customs and Inland Revenue Act, 1885, s. 8; that of tea and coffee, in the Adulteration of Tea and Coffee Act, 1724; and there are many other Acts dealing specially with particular cases of adulteration of articles intended for human consumption or the ingredients of such articles. But the law of most practical importance as regards such adulteration is now to be found in the Sale of Food and Drugs Acts, which are the Sale of Food and Drugs Act, 1875; the Sale of Food and Drugs Act Amendment Act, 1879; the Sale of Food and Drugs Act, 1899; the Margarine Act, 1887; and the Butter and Margarine Act, 1907.

The Adulteration of Seeds Acts, 1869 and 1878, deal with the adulteration of seeds; and the Fertilizers and Feeding Stuffs Act, 1906, which deals with the adulteration of the articles mentioned in its title, is another instance of an Act which provides penalties for the adulteration of things other than those intended for human consumption.

Adultery. This means sexual intercourse between a married man or married woman and any person other than his or her wife or husband. Adultery by the husband is a ground for judicial separation (q.v.) and, when either incestuous or combined with other matrimonial offences, for dissolution of marriage. Mere adultery by the wife is a ground for dissolution of marriage, and it also (Matrimonial Causes Act, 1857), entitles the husband, if he thinks fit, to present a petition against the wife and the adulterer claiming only damages against the adulterer.

Under the first Statute of Westminster (1285), 34 Edw. 1, st. 1, c. 34, a wife forfeits her dower (q.v.) by her adultery unless condoned, by subsequent cohabitation, by the husband. Upon the adultery of the wife, the husband's common law liability to supply her with necessaries ceases. It is a good defence to a charge (made under the Vagrancy Act, 1824, s. 3) of neglecting to maintain her; and, unless condoned, to an application against the husband (under the Poor Law Amendment Act, 1868, s. 33) for an order that he shall maintain her; and also, unless he has condoned, connived at or conduced to the adultery, to a summons against him by the wife for maintenance under the Summary Jurisdiction (Married Women) Act, 1895, s. 6. If an order has been made under the last-mentioned Act, it may (*ib.* s. 7) be revoked either upon proof of subsequent adultery by the wife or upon proof of such antecedent adultery as would have been an answer to the application for the order, if it appears either that such antecedent adultery was not within the knowledge of the husband when the order was made or that he was prevented by some sufficient cause, such as illness, from appearing on the hearing of the original application and proving such adultery.

Adultery has always been one of the offences with regard to which the ecclesiastical Courts had a jurisdiction. That jurisdiction still exists, but is now obsolete. Chapter 10 of the Acts of Parliament for 1650 made adultery a felony, without benefit of clergy, and punishable with death: but this Act, which does not seem to have been put in force, was of no effect after the Restoration.

Advanced Member (or **Borrowing Member**), a member of a building society who has borrowed money from the society on mortgage.

Advanced Note. This is a note given by the master of a ship to a seaman who has signed on, promising to pay to the order of such seaman a sum not exceeding one month's wages if the seaman goes to sea pursuant to his agreement (Merchant Shipping Act, 1894, s. 140). This enactment applies only to seamen shipped in ports in the United Kingdom; and, as regards seamen shipped elsewhere, it would appear that no advance note can be given in contravention of the Piracy Act, 1721, s. 7, which provides that no master shall pay to any seaman, while beyond seas, above half the wages due at the time of payment.

Advancement. In wills and settlements containing limitations in favour of children on their attaining twenty-one, power—known as a power of advancement—is generally given to the trustees or guardians to apply, for the advancement or benefit of each child during its minority, part of the capital or share of the property to which it will become entitled on attaining twenty-one. The money might, for instance, be wanted to pay a premium on articles. The Conveyancing Act, 1881, s. 43,

does not give a power of advancement; and where such a power is desired, it must still be expressly given by a clause in the settlement. See MAINTENANCE; ACCUMULATION.

The Statute of Distribution provides that, in dividing the estate of an intestate, every child " who shall be advanced by the intestate in his lifetime by portion " shall only receive so much of the estate as, with the portion advanced, will make his share equal to those of the other children. An " advancement by portion " within the meaning of the statute is a sum given by a parent to establish a child in life (as by starting him in business), or to make a provision for the child (as on the marriage of a daughter). (See HOTCHPOT.)

The equitable doctrine of advancement is that, if a purchase or investment is made by a father, or person *in loco parentis*, in the name of a child, a presumption arises that it was intended as an advancement (that is, for the benefit of the child), so as to rebut what would otherwise be the ordinary presumption in such cases of a resulting trust in favour of the person who paid the money. (See TRUST.) The doctrine also applies to a purchase made in the name of a wife. And it has been held to apply to the case of a purchase by a godmother in name of a godson, even though she was not *in loco parentis*.

The presumption of advancement is raised in favour of the following persons:—A legitimate child; an illegitimate child; a grandchild (father being dead); a wife; a wife's nephew. But the presumption has not hitherto been extended to the following cases:—An illegitimate grandchild; a kept woman; the child of a widow, when the widow is the purchaser.

In all these cases, the question whether the presumption of advancement arises or does not arise, depends altogether on the relationship existing between the parties; the presumption may be rebutted or corroborated by extrinsic or parol evidence.

Ad ventrem inspiciendum, the same as the writ VENTRE INSPICIENDO, DE (q.v.).

Adventure. The sending of goods abroad in a ship, under the charge of a super-cargo or other agent, who is to dispose of them to the best advantage for the benefit of the owners thereof. The term has fallen into disuse.

Adventure, Bill of, a paper signed by the owner or master of a ship in which it is stated that certain goods shipped in her, in the name of such owner or master, are in fact the property of another person and are shipped at the risk of such other person, to whom such master or owner thereby undertakes to account for the proceeds. Bills of adventure are now obsolete.

Adverse Possession. This is an occupation of realty inconsistent with the right of the true owner; in other words, where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than as owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it, unless there is something to show that his possession is consistent with a recognition of B's title.

Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse *ab initio* But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. In the case of a lessee, his possession becomes adverse (i) if he discontinues payment of rent, or (ii) if he pays rent to a person claiming the land adversely to the rightful owner, and does not afterwards pay any rent to the rightful owner; in the latter case the rule only applies if the rent amounts to 20*s*. or upwards. In the case of persons other than lessees, the rule seems to be that possession is never considered adverse if it can be referred to a lawful title, and that where a person obtains possession by a permissive or fiduciary title, or by his own agreement, or by judgment of law, he and all claiming under him are presumed to hold possession according to that right.

Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time, produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property (see LIMITATION; PRESCRIPTION); and this although the true owner is ignorant of the adverse possessor being in occupation.

Adverse witness. This is defined to be a witness whose mind discloses a bias hostile to the party examining him; it is not a witness whose evidence, being honestly given, is

adverse to the case of the examinant. An adverse witness may, with the leave of the Court, be cross-examined by the counsel calling him. See WITNESS.

Advertisements. Although at one time some doubt was entertained whether a strict contract could be entered into by advertisement, for want of privity between the person advertising and the person who closes with the advertisement, still it is now settled that a good contract arises thereby. Thus, where the makers of a remedy against influenza offered by advertisement £100 to anyone who contracted influenza while using the remedy, they were held liable to one who in fact contracted influenza while using the remedy. In case there should not be any contract, an action of tort would lie for a fraudulent advertisement producing damage.

Under the Larceny Act, 1861, s. 102, anyone publicly advertising a reward for the return of any property which shall have been lost or stolen, suggesting that no questions will be asked, or offering to repay to any pawnbroker or other the amount advanced on the security of the property, forfeits the sum of £50 for every such offence, to be recovered by anyone suing therefor. And the printer and publisher are also liable, but in their case (Larceny (Advertisements) Act, 1870) the action is to be commenced within six months, and only after the sanction of the Attorney-General or Solicitor-General to its institution has been obtained.

The use of large hoardings for advertisements may be regulated, in urban districts with a population of over 5,000, under the Advertisements Regulation Act, 1907; and the display of advertisements which are injurious to the amenities of ancient monuments may be restrained under that Act as applied by the Ancient Monuments Consolidation and Amendment Act, 1913, s. 19.

The Advertising Stations (Rating) Act, 1889, makes land rateable if used only for advertising purposes, according to its value for such purposes.

See also INDECENT ADVERTISEMENTS; SKY SIGNS.

Advertisements of Queen Elizabeth. These are certain articles or ordinances drawn up by Archbishop Parker and some of the bishops in 1564, at the request of Queen Elizabeth, the object of them was to enforce decency and uniformity in the ritual of the Church. The Queen subsequently refused to give her formal sanction to these advertisements, and left them to be enforced by the bishops under their general powers.

Advice, Letter of, a letter from one merchant or banker to another in which notification is given of some business transaction in which both are engaged, such as the consignment of goods or the drawing of bills of exchange.

Advice of Court. Under Ord. LV., r. 3, executors and administrators, as well as trustees under any deed or instrument, and any person claiming to be interested in the estate of a deceased person, or as *cestui que trust* (q.v.) under such deed or instrument, may apply for the determination of any question arising in the administration of the estate or trust. The application is made by originating summons returnable in the chambers of a judge of the Chancery Division. An opinion of the Court, given upon such summons, would appear to completely protect anyone acting thereon.

Advice on Evidence. When the pleadings have closed in an action in the High Court, all the papers in the case are usually sent to counsel for him to advise as to the evidence which is necessary to support his client's case. The reasonable costs of obtaining such advice are to be allowed on taxation of costs (Ord. LXV., r. 27 (15)).

Ad vitam aut culpam. An office is said to be held *ad vitam aut culpam* when it is held during the life of the officer or until he misconducts himself in such manner as to justify his removal from office. Such an office is, in fact, held by the officer *quamdiu se bene gesserit*, that is to say, as long as he conducts himself properly.

Advocate. This means generally one who pleads the cause of another in a judicial tribunal. In English law, it means one who does so in a professional capacity. There are now no practitioners in the English Courts who can accurately be described as advocates. Formerly, however, members of the College of Advocates (q.v.) were accurately and always described as advocates.

The professional advocates now known to the English law are barristers and solicitors, as to whom, and their respective rights of audience, see BARRISTER; SOLICITOR.

In Scotland all counsel are called advocates. See ADVOCATES, FACULTY OF.

Advocate, Crown. This was the popular description of the Admiralty Advocate, (always a member of the College of Advocates (q.v.)), who was the second law officer of the Crown in the Court of Admiralty, the first being the

Advocate-General (q.v.). The office has been vacant for many years.

In Malta the chief law officer is called the Crown-Advocate.

Advocate-General. His Majesty's Advocate-General (colloquially known as the King's Advocate) was the principal law officer of the Crown in the College of Advocates (q.v.), and in the Admiralty Court (while it existed as a separate Court), and in the Ecclesiastical Courts. The office has never been formally abolished; but it has not been filled since 1872. Until the College of Advocates (q.v.) was abolished in 1857, the Advocate-General was always chosen from amongst the members of that body.

In the Indian Presidencies, the chief law officer is known as the Advocate-General. In Mauritius, he is called the Procureur and Advocate-General.

Advocate, King's. See ADVOCATE-GENERAL. In Sierra Leone, Lagos and Cyprus, the chief law officer is called the King's Advocate.

Advocate, Lord, the chief law officer of the Crown in Scotland, corresponding generally to the English Attorney-General.

Advocates, College of. This was a society of men associated for the practice of the civil and canon law. In 1567 some of them purchased the site of what was afterwards known as Doctors' Commons and erected thereon houses for the Admiralty and Ecclesiastical Courts and residences for judges. The Archbishop of Canterbury always selected from the college the judges of the Archiepiscopal Courts. The society was incorporated in 1768 by royal charter. In 1832 the college consisted of the president, who was always the Dean of the Arches (see ARCHES, COURT OF) for the time being, and the fellows. The fellows were elected from those who had been admitted as advocates in pursuance of the rescript of the Archbishop of Canterbury. Any person seeking admission as an advocate was required to be a Doctor of Laws in an English university. No person admitted as an advocate was permitted to practise as such until after a year from the date of his admission. Down to 1857, when the College of Advocates was abolished in pursuance of the Court of Probate Act, 1857, ss. 116, 117, members of the college had the exclusive right to practise in the Ecclesiastical and Admiralty Courts. After 1857, advocates were permitted to practise in all Courts, while barristers were admitted to the then newly-created Probate and Divorce Courts; and, after 1859, barristers were admitted to practise in the Admiralty Court.

Barristers have latterly been permitted to appear in the Ecclesiastical Courts that are still held: but the Archbishop still has power to appoint advocates for such Courts.

Advocates, Faculty of. This is the body which has the exclusive right of appointing advocates or members of the Scottish Bar. It corresponds to the four Inns of Court (q.v.) in England and to King's Inns (q.v.) in Ireland.

Advocatione decimarum, De. See INDICAVIT.

Advow, Avow, or **Avouch.** Under the feudal system, a tenant had to call upon his lord to defend his right if it were impugned. This was called *advocare* or *voucher à garantie*, that is to say, to vouch. The tenant, by calling on the lord to advow, recognised the lord as feudal superior; and so avower, or a calling to avow, came to mean that the person avowed was admitted to be the feudal superior; and subsequently the words *advocare*, avow, or avouch, came to be used as descriptive of the action of the person performing the duty of defending the right impugned.

Advowson, the right of presentation to a church or benefice: and he who has the right to present is called the patron or *patronus*, sometimes also *advocatus*, and sometimes *defensor*. Advowsons are of two kinds: (1) Appendant, and (2) In gross. An advowson appendant means an advowson which is, and which has been from the first, and has since continued to be, appended or annexed to a manor, so that, if the manor were granted to anyone, the advowson would go with it as incident to the estate. An advowson in gross signifies an advowson that belongs to a person but is not annexed to a manor; so that an advowson appendant may be made an advowson in gross by severing it by deed of grant from the manor to which it was appendant. An advowson in gross cannot again become appendant. Advowsons are also either (1) presentative, or (2) collative. An advowson is termed presentative when the patron has the right of presentation to the bishop or ordinary, and also to require of him to institute his clerk, if he finds him qualified. An advowson is termed collative when the bishop and patron happen to be one and the same person, so that the bishop, not being able to present to himself, performs by one act (which is termed collation) all that is usually done by the separate acts of presentation and institution. An advowson was termed donative when the king, or a subject under express licence of the Crown, had founded a church or chapel, and by a single donation in writing placed the clerk in possession, without presentation, institution,

or induction. In the case of a donative advowson, the benefice upon each avoidance (q.v.) was filled by a gift or donation from the patron to the clerk without the bishop having anything to do with the matter: but the Benefices Act, 1898, s. 12, converted every donative advowson into a presentative advowson as from 1st January, 1899. Again, advowsons are either advowsons of rectories or advowsons of vicarages; the former having been created in very early times, almost contemporaneously with the creation of the manor itself; the latter having grown up more gradually, and as a consequence of the monasteries appropriating to themselves the tithes of the churches, and delegating to a *locum tenens* (vicar) the duties of the rector. The stipend of the vicar, which was at first precarious and inadequate, was settled at an adequate amount, and also secured to him, by the Acts 15 Rich. 2, c. 6, and 4 Hen. 4, c. 12; whence at the present day a vicarage is in general as valuable a living as is a rectory.

The transfer of advowsons is now regulated by the Benefices Act, 1898, s. 1.

An advowson, being the right of presentation *in perpetuum*, as often as a vacancy arises, is considered real estate, while a right of presenting once only, or a single presentation, is considered personal property only.

See NEXT PRESENTATION; JUS PATRONATUS.

Aedificare in tuo proprio solo non licet quod alteri noceat (3 *Inst.* 201). (No man is permitted to erect on his own land any building which interferes with the rights of another man.) Thus, an action lies against a man who, by building on his own land, obstructs the ancient lights (q.v.) of another man.

Aedificatio solo, solo cedit. (What is built on the land is to be regarded as having become part of the land.) "Passing the land or ground, the structure or building thereupon passeth therewith" (*Co. Litt.* 4*a*). But the rule is not of universal application. Thus glasshouses erected by a market gardener on land of which he is tenant are removable by him as being trade fixtures. See also OMNE QUOD, ETC.

Aenicia Pars. See ENITIA PARS.

Aequitas est correctio justae legis qua parte deficit quod generatim lata est (*Plow*, 375). (Equity is a correction of a just law, in so far as it is defective because of its comprehensiveness.) Plowden, writing in 1571, introduces the maxim by saying: "And Catline [apparently Sir Robert Catlin, Lord Chief Justice of the Queen's Bench, 1559-1574] says that Aristotle defines equity thus." But what Aristotle knew about the relations existing in England between equity and law does not appear in Plowden or elsewhere.

Aequitas est perfecta quaedam ratio quae jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed solum in vera ratione consistens (*Co. Litt.* 24b). (Equity is, as it were, a complete code, unwritten and based on right reason alone, which interprets and amends the law.)

Aequitas est quasi equalitas (*Co. Litt.* 24b). (Equity is, so to speak, equality.) That is to say, it divided benefits and burdens when justice required that this should be done, but law did not provide for its being done.

Aequitas factum habet quod fieri oportuit. (Equity regards as done that which ought to have been done.) Thus, where a man who has contracted to sell realty dies without completing the sale, the purchase money, when the sale is subsequently completed, will form part of his personal estate.

Aequitas nunquam contravenit legi. (Equity never acts in contravention of the common law.) But equity, though adhering to the letter of this maxim, did not follow its spirit. Thus equity claimed the right to restrain a plaintiff who had recovered a judgment in the common law courts from acting on his judgment, if the judgment, in the opinion of equity, was inequitable.

Aequitas sequitur legem (*Gilb. Ch.* 136). (Equity follows the law.) This meant that equity did not claim to override the common law. But it claimed and exercised the right to prevent a man from acting on his legal rights when, in the view of equity, it was unconscientious for him to do so.

Aequum et bonum est lex legum (*Hob.* 224). (That which is equitable and good is the law of laws.) But this is not to say that a man may act in contravention of the laws merely because he thinks that his legal action is equitable and good, and similarly the maxim *Lex injusta non est lex* does not justify the violation of a law which a man considers unjust. Such maxims were never uttered with any intent to set up what is sometimes popularly called "the unwritten law."

Aerial Navigation. This was originally regulated by the Aerial Navigation Acts, 1911 and 1913, and by the Air Navigation Act, 1919. These three Acts were collectively known as the Air Navigation Acts, 1911 to 1919 (Act of 1919, s. 3 (1)). They were all repealed by s. 20 (2) of the Air Navigation Act, 1920, which, along with the Air Navigation Order, 1921 (made 10th August, 1921), now contains the whole law on the subject. The Act of 1911,

s. 1 (1), had empowered the Secretary of State to regulate the use of aircraft so as to prevent their being a danger to individuals on the ground, and the Act of 1913, s. 1 (1), had empowered him to prevent their being used so as to be a danger from a military point of view. These powers, with many others, are provided by the Act of 1920.

Aestimatio capitis, the worth of a head; also known as *pretium hominis*, or the price of a man. It was the penalty payable for various injuries in Anglo-Saxon times. The payment varied according to the rank of the injured person.

Aetate probanda, Writ de, a writ under which, up to the abolition of wards and liveries by the statute 12 Car. 2, c. 2, enquiry was made as to whether a tenant in chief, holding of the King by chivalry, was of full age to receive his lands into his own hands.

Affectus punitur licet non sequatur (9 *Rep* 57*a*). (A man is punished for what he attempts to do, even though he fails to do it.) But the maxim is of limited application. A man is not liable to the same punishment for attempted murder as for murder.

Affeerors, officers, usually two but sometimes four in number, who were sworn by the steward of the Court of a manor or hundred to assess the pecuniary penalties imposed by the Court, if the amount of such penalties was not fixed by custom. They were sometimes known as *taxatores*.

Affeerors seem also to have been employed to assess the damages in cases brought in the inferior Courts.

Affidavit. An affidavit is a written statement in the name of a person, called the deponent, by whom it is voluntarily signed and sworn to or affirmed. See OATH; DEPOSITION; COMMISSIONER. It is usually made in an action or other judicial proceeding (see DECLARATION); and in that case the affidavit consists of the title (q.v.), the body (which contains the statement, and is generally divided into paragraphs), the signature of the deponent, and the jurat (q.v.). As to false swearing in affidavits, see FALSE SWEARING.

Affidavits are of infinite variety, but many are known by short names which do not always explain themselves. The following are the principal:—

When the evidence on the trial of an action is taken by affidavit, the plaintiff files his affidavits in chief; the defendant then files his affidavits in answer to the plaintiff's evidence; and the plaintiff files his affidavits in reply to the defendant's affidavits. On interlocutory applications, evidence is usually given by affidavit. In either case, each party is, as a general rule, entitled to cross-examine the witnesses of the opposite party. See ANSWER; DEPONENT.

When an order is made against a party to an action requiring him to make discovery on oath of the documents in his possession or power relating to the matters in question in the action, he is bound to file an affidavit specifying the documents which he has at that time, or formerly had, in his possession or power, and stating that he has not and never had any others (see Ord. 31, rr. 12, 13). This affidavit is called in the King's Bench Division an affidavit of discovery, and in the Chancery Division an affidavit of documents. See DISCOVERY; PRODUCTION; PRIVILEGE; TRAVERSE.

The party against whom discovery is sought may, in lieu of being ordered to file an affidavit, be ordered to deliver to the opposite party a list of the documents which he has or has had (*ib.*, r 13A).

Where, in a common law action, extra expenses have been incurred which do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc., an affidavit as to these may be required to enable the master to allow them on taxation. This is called an affidavit of increase. It is not to be made unless the master so requires.

An affidavit showing that a person sought to be committed for non-payment of a judgment debt has the means to pay it, is called an affidavit of means.

In probate practice, where probate is desired of a will containing alterations, etc., not evidenced by the signature of the attesting witnesses, or when there otherwise arises any question as to whether the will has been altered since execution, an affidavit is required stating that the will is in the same state as when found at the decease of the testator or as when executed. This is called an affidavit of plight and condition. Where the will has been mislaid and then found, the affidavit is called an affidavit of finding.

In testamentary causes in the Probate Division, the plaintiff and defendant must each file an affidavit stating whether or not any script is in his possession or under his control. In a defended action, the time for filing is fixed by the registrar on the summons for directions. In an undefended action the plaintiff must, unless otherwise directed, file his affidavit before the case is entered for trial. See SCRIPT.

When a married woman is entitled to pro-

the subject of administration proceedings, it will not be delivered to her unless she and her husband make an affidavit that no settlement or agreement for a settlement of her property has been made; for if such a settlement existed, the property might have to be delivered to the trustees of it.

An affidavit proving the service of a writ, notice, or other document, is called an affidavit of service. See SERVICE.

The use of the term affidavit is confined to civil proceedings. The corresponding term for criminal proceedings is information or deposition. The word "deposition" (q.v.) is, however, sometimes used in connection with civil proceedings. See DEBT AND DANGER.

Affidavit Office, an office in the Court of Chancery dealing with matters indicated by its name, the business of which was transferred to the Clerks of Records and Writs (q.v.) by s. 29 of the Court of Chancery Act, 1852.

Affidavit to hold to bail. The Judgments Act, 1838, s. 2, provided that, if, in any action in which the defendant was liable to be arrested, an affidavit was made showing a cause of action of not less than £20 and that the defendant was about to leave the country, a judge might order that the defendant should be held to bail in an amount not exceeding the amount of the cause of action. This affidavit was known as an affidavit to hold to bail. The enactment above mentioned was repealed by s. 20 of the Bankruptcy Repeal and Insolvent Court Act, 1869, as s. 6 of the Debtors Act, 1869 (q.v.), had been passed to replace it.

Affiliation, the process whereby a single woman, or a married woman living apart from her husband, obtains from a Court of summary jurisdiction an order, known as an affiliation order, that a man adjudged by the Court to be the father of her bastard child shall pay for the maintenance of the child a weekly sum not exceeding ten shillings (Affiliation Orders (Increase of Maximum Payment) Act, 1918) until the child shall reach the age of thirteen or (if the Court see fit) sixteen (Bastardy Laws Amendment Act, 1872, s. 5). The Affiliation Orders Act, 1914, provides for the payment of the money through an officer of the Court, unless the applicant, with the approval of the Court, requires it to be paid to her personally. See CORROBORATION.

Affinity is relationship by marriage; that is, the relationship between a husband and his wife's kindred, and between the wife and her husband's kindred. Affinity is a bar to marriage within the prohibited degrees. See CONSANGUINITY; MARRIAGE. The degrees of affinity within which marriage is void are set out in the table annexed to the Book of Common Prayer. That table has statutory authority, and remains in force, except in so far as it is affected by the Marriage (Prohibited Degrees of Relationship) Acts, 1907 and 1921. See DECEASED WIFE'S SISTER.

Cum duae cognationes, inter se divisae, per nuptias copulantur, et altera ad alterius fines accidit, inde dicitur affinitas (*Co. Litt.* 157*a*). (There is said to be affinity when two families, previously unconnected, are connected together by a marriage, so that each family approaches the confines of the other.) This is not a maxim. It is merely a somewhat ponderous definition of affinity.

Affirm. This word is used in three senses. With regard to contracts, where a contract is voidable, if the party at whose option it is voidable elects to waive his right and to carry out the contract as if it had been valid he is said to affirm it; and if the contract is void for fraudulent misrepresentation, the party defrauded may call on the other party to make good his representation and to perform the contract. With regard to Courts, a Court of Appeal is said to affirm the judgment of a Court below if it upholds that judgment. With regard to statements made in or for the purpose of any judicial proceeding, whether civil or criminal, in the witness-box or in informations, depositions, or affidavits, and with regard severally to all places and all purposes where an oath is required, any person who declares either that the taking an oath is contrary to his religious belief or that he has no religious belief, is allowed to substitute an affirmation for the usual oath and is said to affirm (Oaths Act, 1888). Making a false affirmation is punishable as false swearing (see the Perjury Act, 1911, s. 15 (2)).

Affirmanti non neganti incumbit probatio (*Halk. Max.* 9). (He who relies on any fact as part of his case must prove it; the party who denies the fact is not required to disprove it.) But the maxim is not of universal application. Thus, the onus of proving negligence lies in general on the party alleging it. But where, for instance, a ship in motion collides with a ship at anchor, the collision itself is generally *prima facie* evidence of negligence on the part of the ship in motion, and it is for her to prove that she was not guilty of negligence. Compare ACTORI, ETC.; EI QUI, ETC.

Afforare, to value or set a price on.

Afforatus. This word is stated to mean appraised or valued, and to have been used of

things sold in fairs or markets. In ancient charters, it is used of fines and penalties the amount of which was definitely fixed.

Afforciare. This meant literally to add to, increase, or make stronger. Bracton, writing about the year 1250, uses the word as meaning the addition of further jurors to the original jurors if the original jurors disagreed, in order eventually to get twelve jurors to agree to a verdict. A jury and its functions were then wholly different from what they are now. The jurors were men who decided, not upon the evidence of witnesses examined before them, but upon their own knowledge of the facts; so that the afforcement of the jury was really an expedient for getting a sufficient weight of evidence, or, rather, a sufficient number of witnesses, on one side or the other.

Afforest, to convert ground into a forest (q.v.) in the legal sense.

Affray, a common law misdemeanour which consists of the fighting of two or more persons in a public place to the terror of his Majesty's subjects. Prosecutions for the offence are obsolete. Persons guilty of affray are also guilty of some other offence, such as riot (q.v.), assault (q.v.), or unlawful assembly (q.v.), with which they are in practice charged.

Affreightment, a contract, made either by a charterparty (q.v.) or by a bill of lading (q.v.), by which a shipowner agrees to carry goods in his ship for reward.

African Company. This was the popular title of the Royal Africa Company, incorporated by royal charter in 1672. It was given a monopoly of the trade of the West Coast, and also, subject to the right of the Crown, authority to govern the possessions acquired by it along the coast. In 1698 its trade monopoly was abolished by statute. As the result of two Acts, passed respectively in 1750 and 1752, the Company of Merchants Trading to Africa, which was forbidden to engage in trade, replaced the Royal Africa Company for administrative purposes; and it also was known as the African Company. It, in its turn, was abolished by the West Africa Act, 1821, which vested its possessions in the Crown.

After-acquired Property. See MARRIED WOMEN'S, ETC.; SEPARATE ESTATE.

Agard, the Norman-French for award. See NULLUM ARBITRIUM.

Age. In the criminal law a child under seven cannot commit any offence, and a child between the ages of seven and fourteen commits an offence only if it be shown that he acted with knowledge that he was doing wrong. A boy under fourteen can in no circumstances be guilty of rape, or of assault with intent to commit rape. No limit to the age at which parentage is possible has ever been fixed in the case of a man, nor for that matter in the case of a woman; but in the case of a woman, the Courts will assume that childbearing is impossible when her age and also the facts point clearly to that conclusion.

See CARNAL KNOWLEDGE; INFANTS.

Age Prier or **Prayer.** When an action was being brought against one under age for lands which he had by descent, he could move the Court to stay the action until he attained full age. This application (known as *age prier*) was generally granted; it was known as far back as the reign of Edward I.

Agency; agent. An agent is a person who acts on behalf of another person (the principal). The status of an agent, or the relation between him and his principal, is called agency. See PRINCIPAL AND AGENT. The general rule is that whatever a person can do in his own right he may appoint an agent to do for him; but an agent, executor, trustee, etc., cannot himself delegate his office, because the power which he possesses is not in his own right. See DELEGATUS NON POTEST DELEGARE; MINISTERIAL; SUBSTITUTION.

As regards third persons, agency is merely a mode by which a person can do acts through the medium of another person. An act done by an agent within the scope of his authority binds the principal in the same manner as if the principal himself had done it; thus, if I authorise A to buy goods for me, and A does so, I am liable to pay for them.

As regards the principal and the agent *inter se*, agents are of two kinds—gratuitous and remunerated. In the case of a gratuitous agency, the principal cannot compel the agent to enter on the agency, that is, to act as his agent, unless the contract is under seal; but a gratuitous agent who acts as such is liable for gross negligence. Compare BAILMENT. A gratuitous agent, when formally appointed, is commonly called an attorney (q.v.). Where the agent is entitled to be paid for his services, the agency consists of a contract by the agent to perform the services and by the principal to pay him for them. On the other hand, the principal is entitled to demand an account from his agent.

Agents employed for the sale of goods or merchandise are called mercantile agents, and are of two principal classes—brokers and factors (q.v.). A factor is sometimes called a commission agent, or commission merchant; but in practice the latter terms seem to be

frequently used to denote an agent who purchases goods for his principal, while "factor" generally means an agent for sale. A commission agent stands in the relation of vendor (as well as agent) to his principal, because the persons from whom he buys the goods sell to him and not to his principal.

As regards the extent of the agent's authority, he is either general or special. A general agent is one who is empowered to act for his principal in all business of a particular kind (e.g., to conduct a business or branch of a business, or purchase goods of a particular kind from time to time), or one who, though only appointed by his principal to do a particular act, is by occupation an agent, such as a banker or a horse-dealer. A special agent is one who is authorised to do a particular act (e.g., to buy a horse, execute a deed, or the like), and whose ordinary occupation is not to do such acts. In the case of a general agent, the principal is bound by all acts done by him within the scope of his ordinary employment, whether such acts were warranted by his private instructions or not, while in the case of a special agent the principal is only bound if the agent acts according to his particular commission or authority. See DEL CREDERE; POWER OF ATTORNEY; AUTHORITY; RATIFICATION; ULTRA VIRES; WARRANTY.

An agent is not permitted to acquire any benefit or profit for himself in the course of, or by reason of, his agency, unless his principal knows and approves of his so doing; and he must account to the principal for all profits made by him *quâ* agent, unless the principal waives his right. As to the receipt of actual bribes by an agent, see CORRUPTION.

See SECRET PROFITS.

In criminal law, where one person with criminal intention, causes another to do, without criminal intention, an act which would be a crime on his part if it were done with criminal intention, then the former is guilty of the crime committed and the latter is the innocent agent.

As to frauds by agents, see FRAUD.

In the practice of the House of Lords and Privy Council in appeals, solicitors and other persons admitted to practise in those Courts in a similar capacity to that of solicitors in ordinary Courts are technically called "agents."

Agency Terms. These embody whatever is the arrangement as to remuneration which is made between a country solicitor and the London solicitor who acts as the town agent of the country solicitor.

Agentes et consentientes pari poena plectentur (5 *Rep.* 80a). (Those who do an act and those who consent to its being done are visited with the same penalty.) In the criminal law this maxim is not of universal application; it applies to some offences, but not to others. In the case from which it is cited it is used to show how the rights of the various parties to a transaction carried out for the purpose of barring an entail were effected by the transaction.

Agents-General. New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia are each represented in London by an official known as an Agent-General. These colonies, as the constituent parts of the Commonwealth of Australia, are further represented by the High Commissioner of the Commonwealth; and the Union of South Africa, the Dominion of Canada, the Dominion of New Zealand, and Newfoundland, are each represented by a High Commissioner. These Agents-General and High Commissioners are each accredited to the Colonial Secretary, who presents them to the King. They represent their respective Governments in much the same way as ambassadors and ministers represent foreign States.

Aggravated Assault. The Offences against the Person Act, 1861, s. 43, empowers justices to deal summarily with any assault upon a child or a woman which "is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained" (in s. 42) "as to common assaults and batteries." Such an assault is popularly known as an aggravated assault. See ASSAULT.

Aggravation, Matter of. As regards a pleading, this means matter which only tends to increase the amount of damages and does not itself constitute a ground for action.

Agist; Agister; Agistment. Agistment is where a person takes in and feeds or depastures horses, cattle or similar animals upon his land for reward. An agister is, therefore, a bailee for reward, and is liable for the cattle if he uses less than ordinary diligence (e.g. if he leaves a gate open, or if he places a horse in a field where it is likely to be attacked by a bull). An agister has no lien on the animals which he agists, unless there is an express agreement to that effect. As to distraint of agisted cattle, see DISTRESS.

Agitatio animalium in foresta. See DRIFTS OF THE FOREST.

Agreement. Agreement, in its widest sense, is where two or more persons concur in expressing a common intention with the view

of altering their rights and duties. An agreement of this kind has no legal effect when existing by itself, but is an essential part of every true contract, gift, payment, conveyance and compromise, and of every voluntary variation or discharge of a contract or other obligation. Thus, in a formal deed of conveyance, the introductory recital always refers to the agreement in pursuance of which the conveyance is executed, meaning not the preliminary contract of sale but the mutual assent of the parties at the time the deed is executed.

When analysed, the essential marks of an agreement are these: there must be at least two persons; they must definitely intend the same thing; they must communicate this intention to one another; and the object of their intention must be such as will, when carried out, alter their legal position, e.g. by producing the transfer of property or the creation or extinction of a right. The communication of intention may be formal or informal, simple or complicated, but it may always be reduced to the elements of a proposal made by one party and accepted by the other; so that until a proposal is absolutely accepted there is no agreement. See PROMISE.

In its narrower and popular sense, "agreement" has the same meaning as "contract," especially "contract not under seal"; thus an agreement for a lease is a contract to grant a lease. "Agreement" and "contract," however, are sometimes opposed to one another, "contract" generally denoting an arrangement complete in itself, while "agreement" may denote a part of an arrangement. Thus, in a sale of a house, "contract of sale" denotes the whole arrangement between the vendor and purchaser, while each clause binding either of the parties to do a specific thing is an agreement, e.g. a clause binding the vendor to put the property in repair before the sale is completed. See MUTUALITY; CONTRACT.

Agricultural Children, the term popularly applied to children engaged in agricultural work. An attempt to provide for their better education was first made by the Agricultural Children Act, 1873, which, in spite of its title, does not contain the phrases "agricultural children" or "agricultural child." The Act was repealed by s. 52 of the Elementary Education Act, 1876: the latter Act and the various other Elementary Education Acts now deal with such children.

Agricultural Gang. A "gangmaster" is any person, whether male or female, who hires children under thirteen, young persons over sixteen and under eighteen, or females over the age of eighteen, with a view to their employment in agricultural labour on lands not in his own occupation; and an "agricultural gang" means a body of any of such persons under the control of a gangmaster: see s. 3 of the Agricultural Gangs Act, 1867, which is the Act relating to the management of such gangs.

Agricultural Holdings Acts. The Agricultural Holdings Acts, 1908 and 1913, and Part II. of the Agriculture Act, 1920 (collectively entitled the Agricultural Holdings Acts, 1908 to 1920), form a code which confer on an outgoing tenant of a holding many advantages (out of which he cannot contract himself) with regard to (1) Compensation for improvements; (2) Compensation for disturbance; (3) Compensation for damage by game; (4) Fixtures erected by him; (5) Distress; (6) Length of notice to quit; (7) the cultivation of his holding and various other matters.

The term "holding" means any "land held by the tenant which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord" (Act of 1908, s. 48).

The term includes any land so used, even though there is held along with it other land not so used (Act of 1920, s. 24), but only where both parcels of land are held on a contract of tenancy commencing after the commencement of the Act of 1920 (*ib.*).

The effect of the Agricultural Holdings Acts cannot be given fully here; reference for certain details may be made to ANIMALS, LIABILITY FOR; COMPENSATION FOR DISTURBANCE; COMPENSATION FOR IMPROVEMENTS; CUSTOM; DISTRESS; FIXTURES; MARKET GARDENS; NOTICE TO QUIT.

Agricultural Labourers. See MINIMUM WAGE.

Agricultural Wages Board. See MINIMUM WAGE.

Agriculture and Fisheries, Ministry of. The Board of Agriculture was created by the Board of Agriculture Act, 1889, s. 1, which also provided that a President of the Board might be appointed. The powers and duties of the Board of Trade as to fisheries were transferred to it by the Board of Agriculture and Fisheries Act, 1903, which provided that the Board of Agriculture should in future be known as the Board of Agriculture and Fisheries. The Ministry of Agriculture and

Fisheries Act, 1919, s. 1, repealed s. 1 of the Act of 1889, and substituted the Ministry of Agriculture and Fisheries for the Board and a Minister of Agriculture and Fisheries for the President of the Board. The Minister is not disqualified from sitting in Parliament (Act of 1889, s. 8). He must be a member of the Privy Council (*ib.*, s. 1 (2)). His salary is £2,000 a year (*ib.*, s. 5 (2)). He may appoint two secretaries, one of whom is not disqualified from sitting in Parliament (*ib.*, s. 5; Board of Agriculture and Fisheries Act, 1909).

Under the Act of 1889, s. 2 (1) and sch. 1, there were transferred to the Board (1) the powers and duties of the Privy Council under the Contagious Diseases (Animals) Acts (now replaced by the Diseases of Animals Acts, 1894 to 1914 (q.v.), and the Destructive Insects Act, 1877 (which, along with a further Act of 1907, is known as the Destructive Insects and Pests Acts, 1877 and 1907 (q.v.)); (2) the powers and duties of the Land Commissioners for England under all Acts relating to Allotments, Commons, Copyhold, Drainage and Improvement of Land, Enclosure, Metropolitan Commons, Tithe Rent-charge, Agricultural Holdings, Conveyancing, Glebe Land, Settled Land, and Estates of Universities, Colleges, and Public Schools, and under all other Acts, whether public or private; (3) all powers and duties which were vested in the Commissioners of Works by the Survey Act, 1870. The Dogs Act, 1906, s. 2, gave the Board certain powers, in addition to those under the Diseases of Animals Acts, as to dogs (q.v.). The Markets and Fairs (Weighing of Cattle) Act, 1891, gave the Board certain powers (some of which had previously been exercised by the Local Government Board) as to markets and fairs (q.v.).

Under the Agricultural Holdings Act, 1908, s. 15, the Board was empowered to grant to a landlord of a holding, in respect of which he had paid compensation for improvements to a tenant, a charge on the holding for the amount paid; and under the Agricultural Act, 1920, s. 29, this power extends to a payment made as compensation for disturbance.

Under the Merchandise Marks (Prosecutions) Act, 1894, s. 1, the Board might exercise, with regard to cases relating to agricultural or horticultural produce or (Board of Agriculture and Fisheries Act, 1903, s. 1 (8)) the produce of any fishing industry, the powers given by the Merchandise Marks Act, 1891, to the Board of Trade in respect of prosecutions for offences under the Merchandise Marks Act, 1887.

Such statutory powers and duties of any public department as may appear to his Majesty to relate to agriculture or forestry or (Board of Agriculture and Fisheries Act, 1903, s. 1 (3)) to the industry of fishing might be transferred to the Board by Order in Council (Act of 1889, s. 4). The policy of the Legislature was, in fact, to assign all such matters to the Board. Thus the administration of the Maintenance of Live Stock Act, 1915, and of the Corn Production Act, 1917, was entrusted to the Board; and now the Administration of the Agriculture Act, 1920, is entrusted to the Ministry, which, under s. 1 of the Ministry of Agriculture and Fisheries Act, 1919 (see *ante*), replaces the Board for every purpose mentioned above.

Aid by Verdict. Under the old common law practice certain defects as regards forms in the indictment or the pleadings, which would have been fatal upon demurrer (q.v.), were said to be aided or cured by the verdict, that is to say, the opposite party could not take objection to them after the verdict, because he had "pleaded over" (or taken no notice of them) instead of demurring. Other defects might, however, be of so serious a character that the Court, even after verdict, would on application stay or arrest the judgment on the ground that the whole proceedings had been vitiated; and in such case there was no aid by verdict, and in criminal proceedings this still applies. See JEOFAILS.

Aid Prayer. In real actions (abolished in 1832) this meant a petition in Court by which the tenant might call for the assistance, to help him to plead, of some other person. Thus, a tenant for life might call for the assistance of the reversioner or remainderman, and an incumbent might call for the assistance of the patron or ordinary. The person of whom aid was prayed was joined as a party, and helped to defend the action.

Aids. These were originally, in theory at any rate, voluntary payments from feudal tenants to their lords, but gradually the lords came to demand them as of right. In the reign of Henry II. Glanville says that the lord was entitled to the aid for paying the relief due to his own overlord, the aid for knighting the lord's eldest son, and the aid for marrying the lord's eldest daughter. The aids payable to the King as feudal overlord were specified in Magna Charta. All these feudal aids were abolished by the statute 12 Car. 2, c. 24; but parliamentary taxes continued to be called aids down to 1688.

Aiel, a grandfather. A writ of aiel was a

real action which lay for the recovery of lands of the heir's grandfather which had been seized on the day of his death, and which had been abated by a stranger. See ABATEMENT OF FREEHOLD; BESAIL; COSINAGE.

Air. At common law, every landowner is entitled to the enjoyment of air passing to and from his land over the land of another landowner. But this right does not entitle a landowner to claim that another landowner shall not use his land in the ordinary way, as by building on it, and so obstructing the passage of air to or from adjoining land, unless an easement (q.v.) to the air has been acquired which gives the person possessing such an easement the right to prevent any such use of adjoining land as will interfere with the enjoyment of the easement. A right to the absolutely uninterrupted flow of air to or from adjoining land cannot be acquired. If land is conveyed for a specific purpose, the person who conveys the land will not, indeed, be permitted so to use land which remains in his possession as to interfere with the use for such purpose of the land which he has conveyed; and so, where land is granted with a stable on it, the grantor will be restrained from interrupting the passage of air so as to render the stable useless. But, except in such a case, an owner of land cannot be prevented from erecting buildings which, for instance, interfere with the access of air to a windmill on adjoining land, or which cause chimneys on adjoining land to smoke. But an easement can be acquired which gives a right to the passage of air into or out of a defined aperture, such as a window or ventilating opening; and an owner of adjoining land can be restrained from using his land so as to interfere with such right. Such an easement can be acquired by prescription (q.v.). The right to pure air is a natural right. In the absence of an easement, pollution of air in such a degree as to injure health or property is an injury for which an action lies; but if the pollution is such as merely to cause inconvenience or discomfort, the circumstances of each case will determine whether there is or is not a right of action. Thus a dweller in towns cannot expect the same freedom from smoke and smell as one dwelling in the country. See LEX NON FAVET, ETC.

Air Board, a body constituted for the management of the air forces of the Crown under the New Ministries and Secretaries Act, 1916. All its former powers, duties, etc., were transferred to the Air Council by the Air Forces (Constitution) Act, 1917, s. 8 (3).

Air Council. See AIR FORCE.

Air Force. The Air Force (Constitution) Act, 1917, provided for the establishment, administration and discipline of the Air Force. The force is under the administration of the Air Council, consisting of a Secretary of State (q.v.) and such other persons as may be appointed pursuant to the Act (s. 8). The force is subject to the Army Act, with the necessary alterations (s. 12). The Secretary for Air is responsible for the Air Force, as the Secretary for War is for the Army, and as the First Lord of the Admiralty is for the Navy.

Air-Gun. See GUN.

Air Navigation. See AERIAL NAVIGATION.

Airway, an inlet for air in a mine; malicious injury or obstruction is dealt with by s. 28 of the Malicious Damage Act, 1861.

Aisle. This term means a nave, choir, or transept of a church

An aisle which from time out of mind has belonged to a particular house and has been maintained and repaired by the owner of that house, is part of his freehold, and the ordinary (q.v.) cannot interfere with it or dispose of it. If anyone, as owner of a house, has thus a right to the exclusive use of an aisle, he may convey it to another person to be held independently of the house.

If the owner of a house builds a new aisle to a parish church, the exclusive right to use the aisle for worship or burial may be given to him, by faculty of the ordinary annexing the aisle to the house during the possession of the house by such person and his family.

Akermannus, a villein who had to plough his lord's demesne.

Alabama Case. The *Alabama* was built at Liverpool, during the American Civil War, for use by the Confederate States as a warship. She left British waters without being equipped with her guns, which were put into her at the Azores. She subsequently destroyed a number of merchant ships belonging to the Northern States. The United States Government, which had ineffectually endeavoured to induce the British Government to prevent her leaving British waters, subsequently claimed damages for her depredations from the British Government; and ultimately, under the Treaty of Washington, concluded May 8, 1871, between the two Governments, the amount of damages was fixed at £3,229,166 by an international tribunal at Geneva. It was agreed in the treaty that the tribunal should be bound by the following rules:—

"A neutral government is bound—(1st) To use due diligence to prevent the fitting out, arming or equipping, within its jurisdiction, of

any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, for warlike use; (2nd) Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men; (3rd) To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

These rules have since been part of international law.

Alb; Albe. A white linen vestment reaching to the feet. In the Established Church the use of this vestment would appear to be illegal: but controversy still rages round it.

Alba firma. When quit-rents, payable to the Crown by copyholders or freeholders of manors, were reserved in silver, or white money, they were anciently called white-rents or blanch-farms or *redditus albi*, in contradistinction to rents reserved in work, grain, etc., which were called black maile or *redditus negri*. Lands subject to white-rents were said to be held *per albam firmam*.

Alderman. The name is borrowed from the Anglo-Saxon ealdorman (literally, an elder), (q.v.). The alderman as we now know him is either the alderman of the City of London (q.v.)—who is in a class by himself—or one of the council which governs the municipal affairs of a borough (q.v.), or the county alderman, as to whom see COUNTY COUNCIL. The county alderman dates only from 1888. The alderman of a town or city is the modern representative of the aldermen who, along with mayors and town councillors, have formed the governing bodies of municipalities for the last seven hundred years.

Alderney. One of the Channel Islands (q.v.).

Aleatory Contract, an expression used in the civil law to describe what the English law terms a wagering contract. See WAGER.

Ale-taster, an officer, also known as an ale-conner, ale-founder, or ale-kenner, anciently appointed at a court-leet to see to the quality of ale within the lordship. In the City of London, at any rate down to the middle of the eighteenth century, four such officers were annually appointed by the liverymen.

Alfred, Dooms of. Compiled about the end of the ninth century. The preface to them reads as follows: "I, then, Alfred, King, gathered these together, and commanded many of those to be written which our forefathers held, those which to me seemed good; and many of those which seemed to me not good I rejected them, by the counsel of my Witan, and in other wise commanded them to be holden; for I durst not venture to set down in writing much of my own, for it was unknown to me what of it would please those who should come after us. But those things which I met with, either of the days of Ine my kinsman, or of Offa King of the Mercians, or of Æthelbryght, who first among the English race received baptism, those which seemed to me the rightest, those I have here gathered together, and rejected the others." See Thorpe, *Ancient Laws of England*, 2 vols., 1840; Turk, *Legal Code of Alfred the Great*, 1893; Attenborough, *Laws of the Earliest English Kings*, 1922.

Alia enormia (*other wrongs*). Declarations (corresponding to what is now termed the statement of claim) in the action of trespass, after stating or alleging the specific wrongs or injuries complained of, usually concluded with the general words, "and other wrongs to the plaintiff then did, &c."; and this conclusion was frequently called, in the language of pleading, the allegation of *alia enormia*.

Alias. When a person who goes by several names is indicted, he is described in the indictment as "A B, otherwise C D, otherwise E F," etc. Formerly, when pleadings, etc., were in Latin, this was expressed *alias dictus* ("otherwise called"); and hence such a person is said to go by several aliases or false names.

Alias Writ. This was a second writ, issued after a former one had proved ineffectual. If the *alias* also failed, a third writ might have been sued out, which was called a *pluries*. These writs derived their respective names from the words occurring in their respective forms, viz., "*Sicut alias praecipimus*," "*Sicut pluries praecipimus.*" Both forms of writ were abolished by the Common Law Procedure Act, 1852, s. 10, and the same statute in its 9th section enacted that the plaintiff in any action might, at any time during six months from the issuing of the original writ of summons, issue one or more concurrent writ or writs. And now under Ord. VI., r. 1, the plaintiff, at the time of issuing the original writ or within twelve months thereafter, may issue one or more concurrent writ or writs (i.e., copies of

the original writ, even the date being the same) with a seal containing the word "concurrent" impressed on each copy. A writ for service within the jurisdiction may be issued concurrently with one for service out of the jurisdiction, and *vice versa* (Ord. VI., r. 2). The concurrent writ is in force only so long as the original is in force, but may be renewed like the original writ.

Alibi. A prisoner or accused person is said to set up an alibi when he alleges that at the time when the offence with which he is charged was committed he was "elsewhere," that is, in a different place from that in which it was committed. If proved, it is, of course, a complete answer to the charge.

Alien. At common law an alien is a subject of a foreign State who was not born within the allegiance (q.v.) of the Crown. But now such a person may become a British subject (q.v.) by naturalization (q.v.), and a British subject may become an alien by alienage (q.v.) or by expatriation (q.v.); and at present "the expression 'alien' means a person who is not a British subject" (British Nationality and Status of Aliens Act, 1914, s. 27 (1)).

The Acts which now, and for the first time, enable the Government to control aliens effectively are the Aliens Restriction Act, 1914, and the Aliens Restriction Amendment Act, 1919. The first of these Acts (s. 1) empowers the King to make provision by Order in Council:—for prohibiting aliens from landing in the United Kingdom either at all or except as the Order may direct; for prohibiting the exit of aliens from the United Kingdom either altogether or except as the Order may direct; for the deportation of aliens from the United Kingdom; for regulating their places of residence; for the registration of aliens; for the punishment of breaches of such Order; for arrest and search; and "for any other matters which appear necessary or expedient for the safety of the realm." The section limited the exercise of this power to times of war, imminent national danger, or great emergency: but the Act of 1919, s. 1 (1), gave the Crown power to issue the Order in Council at any time whatsoever within one year from 23rd December, 1919: and s. 1 (1) of the Act of 1919 has been kept in force by the Expiring Laws Continuance Acts of 1920 and subsequent years, so that it has become *quasi*-permanent. The Act of 1919, s. 2 (1), also provided that any Order in Council made under the 1914 Act must contain provisions as to the nationality to be ascribed to aliens.

In pursuance of these enactments, the Aliens Order, 1919, and the Aliens Order, 1920 (which revoked the Order of 1919 as from 12th April, 1920), have been made.

Alien ami; Alien ennemi. The subject of a foreign State is known to the law as an *alien ami* while this country is at peace with that State. While a state of war exists between this country and that State he is known as an *alien ennemi*, and he cannot sue in an English Court unless by virtue of an Order in Council or of a duly authorised licence or unless he comes within the realm in some capacity, such as that of an envoy, which puts him within the King's peace.

Alienage. A British subject can lose his British nationality either by expatriation (q.v.) or by a declaration of alienage—that is to say, by declaring that he abandons his *status* of a British subject (q.v.)—under the British Nationality and Status of Aliens Act, 1914, ss. 14, 15.

Alienatio licet prohibeatur, consensu tamen omnium in favorem quorum prohibita est potest fieri (*Co. Litt.* 98*a*). (Although alienation be prohibited, yet it may take place with the consent of all the persons in whose interests it is prohibited.) This maxim is both good law and good sense, and requires no explanation.

Alienatio rei prefertur juri accrescendi (*Co. Litt.* 185*a*). (The law favours the alienation rather than the accumulation of property.) This is illustrated by the rule under which the right of one joint tenant to take the whole subject of the joint tenancy on the death of the other is defeated if the joint tenant who first dies has disposed of his share during his lifetime. Other illustrations are the rule against perpetuities (q.v.), and the restriction of accumulation (q.v.).

Alienation. This is the power of the owner or tenant to dispose of his interest in real or personal property. With reference to personal property, the power appears to have always existed, subject only to certain difficulties in the mode of the alienation; but with reference to real property, the power was only slowly and gradually acquired. For,

I. As to Voluntary Alienation,—

Originally no estate of freehold was alienable by the tenant without the consent of the lord of whom he held; and in fact all estates in land were at first only life estates. See ESTATE. By the time of Henry II., however, the power of alienation was permitted to the tenant over lands acquired by purchase, to the extent of defeating his heirs of their succession, or of part thereof. Gifts in frankmarriage and in frankalmoign (see these titles)

were the earliest of these partial modes of alienation. Subinfeudation was the other mode of alienation which was most common (see that title); and, as the heir of the subinfeudor became entitled to the rent or services in lieu of the land, that equivalent (being most probably a substantial equivalent) may have hastened the development of the ancestor's power over the expectant interests of his heir. For, at any rate as early as the reign of Henry III., the power of the ancestor to destroy the expectation of his heirs, whether collateral or lineal, had become absolute.

The process of subinfeudation infringed also on the right of the lord, rendering it more precarious and also more difficult to levy the services to which he was entitled as landlord in chief; and accordingly it was attempted by Magna Charta, c. 32, to check the practice of subinfeudation. But the practice was not effectually checked by that enactment; and a new mode of grant also about that time came into use, being to a man and his heirs, or to whomsoever he might assign the land—words which expressly conferred upon the tenant a power of alienation. In consequence of this last-mentioned mode of grant, and the power of alienation which it carried with it, the lord was still more prejudiced in his interests, and in particular in his reversion or right to resume the lands upon the determination of the issue of his grantee. This change to the disadvantage of the lord is commonly assigned to the feebleness and distractions of the reign of Henry III., and it is said to have also been fostered by the crusading spirit of the age.

At length it was enacted by the statute *Quia Emptores*, 18 Edw. 1 (or Statute of Westminster III.), c. 1, that every freeman might, without his lord's consent, sell his entire lands, or any portion thereof, the purchaser to hold the lands of the same chief lord that his vendor previously held. In this manner alienation by deed *inter vivos* became complete.

The power of alienation by will grew up later. Putting on one side certain limited customary powers of devise, lands could not originally be devised by will at all, excepting in an indirect and circuitous manner. The method resorted to was to convey the lands by deed *inter vivos* to some third person to hold the same to such uses as the person conveying should mention in his will. This process was checked for the future by the Statute of Uses, 27 Hen. 8, c. 10; but, the process having been long in use, the power of testamentary disposition over lands could not be withheld altogether, and accordingly it was partially restored by the stat. 32 Hen. 8, c. 1, which enabled a tenant to dispose of the entirety of his socage tenures and two-third parts of his knight-service tenures; and the statute 12 Car. 2, c. 24, having converted all knight-service into socage tenures, the power of alienation by will was, by a side wind, made absolute.

II. As to Involuntary Alienation,—

Originally lands were not liable to be taken in payment of debts, but since the reign of Henry III., when estates of inheritance first became general, the liability has been gradually imposed by statute. By the statute 13 Edw. 1, c. 18, one moiety of a debtor's legal fee simple lands became liable during his life upon judgment debts by means of the writ of *elegit*; by the Statute of Frauds, 29 Car. 2, c. 3, s. 10, one moiety of his equitable fee simple lands became also liable in like manner; and by the Judgments Act, 1838, the entirety of the fee simple lands, whether legal or equitable, of the debtor were rendered liable upon judgment. See JUDGMENT DEBTS. After the decease of the debtor, his legal fee simple lands were at first liable if and so far as he had either charged them with the payment of his debts or specially bound his heir with such payment; by the statute 3 Will. & Mary, c. 14, the word "heir" was extended so as to include devisee of the lands; by the Statute of Frauds, 29 Car. 2, c. 3, his equitable fee simple lands were made liable to the same extent as if they had been legal; and, finally, by the Administration of Estates Act, 1833, all his lands (whether legal or equitable or of whatever tenure) were rendered liable for his debts of all kinds.

An estate tail, although of inheritance, is not liable for debts after the decease of the debtor; but it is liable during his life in case of his bankruptcy, and also upon a judgment duly executed against him, in either case to the same extent that he (the debtor) himself could, without the assistance of any other person, alienate the same.

Alienation in Mortmain. This means the alienation (q.v.) of lands or tenements to any corporation (q.v.), sole or aggregate, and whether ecclesiastical or temporal.

Alieni juris, under the mastership of another. In the Roman law it meant one under the *potestas* or power of a father or master as opposed to a person *sui juris*, that is to say, a person not subject to such authority. In the English law it is not, however,

used as opposed to the expression *sui juris* (q.v.) or at all.

Alimony (*alimonia*). That allowance which is made to a woman for her support out of her husband's estate when she is under the necessity of living apart from him. This provision is allowed the wife during the pendency of a suit for divorce or for judicial separation between her and her husband, as well to provide the wife with the means to obtain justice as for her ordinary subsistence. When there has been a sentence of divorce or of judicial separation, alimony becomes a permanent allowance, and is continued during the whole period of separation. Upon an application for alimony, the Court requires on the part of the husband a statement both of his casual and of his certain income to be set forth. The wife, although the guilty party, has been allowed alimony, or a provision by way of alimony, subject to conditions. As a rule, alimony is fixed at about one-third of the joint incomes of husband and wife if there are not, and a larger amount if there are, children to be supported by the wife.

Alio intuitu, with a motive other than the ostensible and proper one, as when a man brings an action for the purpose merely of advertisement.

Aliquid conceditur ne injuria remaneat impunita, quod alias non conceditur (*Co. Litt.* 197*b*). (Something is conceded, which would otherwise not be conceded, lest an injury should be left unpunished.) Coke introduces the maxim by saying: ". . . in every case where a man is wronged and endammaged . . . he shall have remedie."

Aliquis non debet esse judex in propria causa quia non potest esse judex et pars (*Co. Litt.* 141). (No man ought to be a judge in his own cause, because he cannot act as a judge and at the same time be a party.) This maxim is of importance chiefly as regards justices, who are disqualified from acting judicially in any case in the subject-matter of which they have any pecuniary interest, no matter how small. In the High Court the rule is rigidly observed. Thus a judge will not try a case on which he, as counsel, had advised before his elevation to the Bench; and it has been held that the decree of a Lord Chancellor in favour of a company must be set aside merely on the ground that he was a shareholder in the company. Compare NEMO POTEST, ETC.; NEMO DEBET, ETC.; BIAS.

Aliud est celare, aliud tacere. (Silence is not the same thing as concealment.) This maxim is merely a quotation from Cicero, *De Officiis*, lib. 3, c. 12; and Cicero, in his turn, had merely quoted a remark made by Diogenes. It applies to the sale of goods, with regard to which, when there is no warranty either express or implied, the buyer has no remedy against the seller, unless there be fraud. If there be no warranty, the seller is entitled to be silent as to defects. But he is not entitled to take steps to conceal defects for the purposes of the sale: that would be fraud.

Aliud est possidere, aliud esse in possessione (*Hob.* 163). (It is one thing to possess and another thing to be in possession.) The maxim was used of one who, by "a canonical title or allowance or commission," held a cure of souls, and so was "in a sort of possession," but did not "possess" as a tenant possessed land. The maxim is of no present application.

Alkali Works. The Alkali Works Regulation Act, 1906, regulates—

(1) Alkali works, that is to say (s. 27 (1)), every works for (*a*) the manufacture of sulphate of soda or sulphate of potash, or (*b*) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed, in which muriatic acid gas is evolved.

(2) All works of whatever description in which a liquid is produced containing either acid or any other substance capable of liberating sulphuretted hydrogen from alkali waste, or the drainage thereof (s. 3 (1)).

(3) Sulphuric acid works, as defined in Sch. I. (1) (2).

(4) Muriatic acid works, as defined in s. 6 (2), Sch. I. (8).

(5) The following works:—Chemical manure, gas liquor, nitric acid, sulphate of ammonia, muriate of ammonia, chlorine, sulphide, alkali waste, Venetian red, lead deposit, arsenic, nitrate and chloride of iron, bisulphide of carbon, picric acid, sulpho-cyanide, bisulphite, paraffin oil, tar, and zinc (Sch. I.).

(6) Cement works in which aluminous deposits are treated for the purpose of making cement (s. 8 (1)).

(7) Smelting works in which sulphide ores are smelted or calcined (s. 8 (1)).

Such works must be registered (s. 9). The owners of such works other than Nos. 6 and 7 may, subject to the approval of the Minister of Health, make rules for workmen, imposing fines not exceeding £2 for breaches thereof (s. 15).

The Act contains provisions for the purpose of preventing the discharge of noxious or offensive gases into the air, and generally for the purpose of preventing nuisance. Reference

must be made to the sections dealing with the various classes of works.

Allegans contraria non est audiendus (4 *Inst.* 279; *Jenk. Cent.* 16). (He who makes statements mutually inconsistent is not to be listened to.) "You cannot blow hot and cold" with regard to the same transaction; and so, where a man has made a representation on the faith of which another has acted, then the man who made the representation will not be allowed to contradict it. The doctrine of estoppel (q.v.) is largely founded on this maxim. So also, a witness who contradicts himself on cross-examination is discredited.

Allegans suam turpitudinem non est audiendus (4 *Inst.* 279). (A person alleging his own infamy is not to be heard.) This does not mean that in criminal prosecutions the evidence of an accomplice (q.v.) is not admissible; because it is. Nor does it mean, as regards any witness, that he shall not be allowed to give evidence which discredits himself. What it does mean is that no one shall be allowed to set up a claim based on his own wrongdoing.

Allegari non debuit quod probatum non relevat (1 *Ch. Cas.* 45). (That which would be irrelevant if proved, ought not to be heard.) That is to say, it ought not to be alleged in any pleading or affidavit, nor in any speech of counsel.

Allegatio contra factum non est admittenda. (Where a man has entered into a solemn engagement under his hand and seal as to certain facts he shall not be permitted to deny any matter which he has so asserted.) See ESTOPPEL BY DEED. This maxim is almost identical in meaning with the maxim *Nemo contra, etc.* (q.v.).

Allegation. Generally, this means any statement of fact made in any proceeding, as, for instance, in an affidavit or pleading.

In the ecclesiastical law, any pleading after the first (which is called the libel) is termed an allegation. The answer to the libel—or charge—is termed a responsive allegation; if the plaintiff replies to the responsive allegation, his reply is called a counter allegation or responding application; and when a party objects to evidence adduced by the other party, he is said to give an exceptive allegation.

Allegiance is the tie or *ligamen* which binds the subject to the King, in return for that protection which the King affords the subject. It consists in a true and faithful obedience of the subject due to his sovereign, and is commonly said to be of four kinds—natural, acquired, local, and legal.

Natural allegiance is that which is due from all men born within the King's dominions immediately upon their birth. A person born in the British dominions of alien parents, but who is a subject of a foreign State, may divest himself of this natural allegiance by making a declaration of alienage (q.v.). Acquired allegiance is that obtained by naturalization or denization (q.v.). Local allegiance is that which is due from every alien only so long as he continues within the dominions of the English Crown. Legal allegiance is so called "because the municipal laws of this realm have prescribed the order and form of it": it is created by the oath of allegiance, which has to be taken on various occasions—e.g. by the great officers of the Crown on assuming office. It does not seem to add anything to the duties of ordinary allegiance. To the class of legal allegiance may also be referred that due from the children born abroad of natural-born British subjects, of which, however, they may divest themselves by a declaration of alienage (q.v.).

Allegiance is also used with the sense of locality, as where a person is said to be born within the allegiance of the Crown, meaning within the British dominions.

Formerly allegiance meant also the fealty (q.v.) due by feudal tenants to their lords. See BRITISH SUBJECT.

Allegiare. In the Anglo-Saxon this meant to proceed by course of law.

Aller sans jour. For the Court to order a plaintiff *Aller sans jour* the result was the same as the order *Eat sine die* (q.v.).

Alleviare, formerly used as meaning to pay an accustomed fine to a lord.

All Fours. See NULLUM SIMILE, etc.

All Hallows=All Saints (q.v.). See HALLAMAS.

Allocate. This was a writ authorising the making of certain allowances or discounts to accountants to the Exchequer. See LIBERATE.

Allocation, formerly used as meaning an allowance upon an account in the Exchequer: more recently used in Chancery practice as meaning the appropriation to particular persons or purposes of funds under the control of the Court.

Allocatione facienda, De, a writ which anciently lay for an accountant to the Crown for the allowance to him of such sums as he had lawfully expended in his office. It was directed to the Lord Treasurer and the Barons of the Exchequer.

Allocato comitatu. When a writ of exigent (q.v.) had not been served or complied with,

the writ of *allocatu comitatu* was anciently allowed before the old County Court (q.v.).

Allocatur. What is now known as the certificate of the taxing master, or other official empowered to tax costs, was formerly known as the *allocatur*.

Allocutus. When a prisoner is convicted of treason or felony on indictment, the Court is bound to demand of him what he has to say as to why the Court should not proceed to judgment against him: this demand is called the *allocutus*, and is entered on the record. There is no *allocutus* in misdemeanour.

It is upon the *allocatus* that a female prisoner, who has been found guilty of a capital charge, may plead that she is quick with child. Upon it also any prisoner may move the Court in arrest of judgment, that is to say, show cause why sentence should not be passed. Such motion might formerly be grounded on some such defect in the indictment as vitiated the proceedings; but, in view of the power of amending the indictment which the Court now possesses (see AMENDMENT), little reliance can be placed on any such ground nowadays.

Allodial or **Alodial Lands; Allodium.** This means lands not held of any lord or superior, in which, therefore, the owner has an absolute property and not a mere estate. No subject in England can hold lands allodially; and the highest estate known to the law is an estate in fee simple, which, however, is for all practical purposes equivalent to absolute ownership. It would appear that, prior to the Conquest, the lands known as boclands (q.v.) or book-lands were allodial lands.

Allodium was the ancient name for allodial lands, *feodum*, on the other hand, meaning lands held of a lord in consideration of certain services to be rendered. See FEE.

Allonge. This is a slip of paper annexed to a bill of exchange for endorsements when there is no room for them on the bill. It is mentioned in the Bills of Exchange Act, 1882, s. 32 (1).

Allot; Allotment. To allot is to indicate that a portion of property held by a number of joint owners is in future to belong exclusively to a specific person called the "allottee." Thus a partition of land is effected by allotting to each owner his share in severalty.

In the law of companies, to allot shares, debentures, &c., is to appropriate them to the applicants or persons who have applied for them; this is generally done by sending to each applicant a letter of allotment, informing him that a certain number of shares have been allotted to him, and he is then called an allottee. An allotment of shares pursuant to an application for them constitutes, with the application itself, an agreement binding both on the applicant and on the company, the application being an offer to take their shares and the allotment an acceptance of the offer.

In the law of merchant shipping, an allotment of wages is where a seaman stipulates, by the agreement of service, for the periodical payment of any part of his wages either to a savings bank or to a near relative, such as a wife, parent, child, etc: this is done by an allotment note (Merchant Shipping Act, 1894, ss 141, 142; Merchant Shipping Act, 1906, s. 61; Merchant Shipping (Seamen's Allotment) Act, 1911).

An inclosure of land under the General Inclosure Act, 1845, 8 & 9 Vict. c. 118, is carried into effect by the land being allotted in accordance with the order or Act authorising the inclosure and the rights of the persons interested. "Allotment," in that Act, signifies not only the act of allotting the land, but also the portion of land allotted; the allotments are named from the purposes for which they are made, e.g. allotments for exercise and recreation, allotments for labouring poor, allotments to the lord, commoners, etc. See INCLOSURE.

The Small Holdings and Allotments Act, 1908, Part II. (which is the part relating to allotments), deals with only such small plots of land as are for what used to be described as "the labouring poor," and which do not, except where a larger holding is specially sanctioned, exceed five acres (s. 27 (3)). Such plots of land or allotments, which must each be cultivated as a farm or garden (*ib.*), may be provided by the parish council (acting through the county council), or by the urban district or borough council (s. 39 (7)), or in London by the London County Council (s. 36), for "persons belonging to the labouring population resident" in the parish, district, or borough (s. 23 (1)). Land for allotments may be rented or purchased, by the council concerned, at a rent or price which may reasonably be expected to be covered by the rents to be paid by allotment holders; and if land cannot be acquired by agreement, it may be acquired compulsorily (s. 25—see also the Land Settlement (Facilities) Act, 1919, s. 17, and the Allotments Act, 1922, s. 8). As to the determination of allotment tenancies, see the Small Holdings and Allotments Act, 1908, s. 30 (2), and the Allotments Act, 1922, s. 1; as to compensation to outgoing tenants of allotments,

. 47, and the Act of 1922, ss. 2, 5, 6. See QUARTER RATING; SMALL HOLDINGS COMMISSIONERS; COMPENSATION.

Allotment Warden. By the General Inclosure Act, 1845, s. 108, when an allotment for the labouring poor of a district has been made on an inclosure under the Act, the land so allotted is to be under the management of the incumbent and churchwarden of the parish, and two other persons elected by the parish, and they are to be styled "the allotment wardens" of the parish. See INCLOSURE.

Land under such management may now be transferred to the council of the parish, urban district, or borough in which it is situated (Small Holdings and Allotments Act, 1908, s. 33 (1)).

Allow; Allowance. In procedure, to allow is to admit the validity of something contended for by one of the parties. Thus when a claim against an estate in administration is made out, it is allowed, and a taxing master allows costs which have been properly incurred.

In criminal cases the expression "allowance" is used to describe payments made to witnesses for the defence as well as for the prosecution (see the Costs in Criminal Cases Act, 1908, c. 15).

In lunacy practice, payments made by the Court to persons having moral, as distinguished from legal, claims upon a lunatic are known as allowances.

As regards the coinage, "allowance" is synonymous with "remedy" (q.v.).

All Saints, Feast of, the 1st of November. See FEASTS.

"All the estate." Until the Conveyancing Act, 1881, came into operation on 1st January, 1882, it was the rule to insert in every conveyance a short clause which purported to convey "all the estate, right, title, interest, claim and demand" of the grantor, lessor, etc., in the property conveyed. This clause, which was known as the "all the estate clause," was even then regarded as unnecessary and inoperative. Now it is always omitted in reliance on s. 63 of the Act, which provides that, unless a contrary intention be expressed, every conveyance executed after the Act became operative shall be effectual to convey all the estate, etc., which the party conveying has power to convey.

Alluvion. This is where sand and earth are washed up by the sea or a river so as to make an addition to existing land. If this is done suddenly and to a considerable extent, the new land belongs, in the case of the seashore, to the Crown. Whether the increase be perceptible or imperceptible, it belongs, in the case of a non-tidal river, to the owner of the existing land; and if it be imperceptible, the increase, in the case of the seashore, also belongs to him.

In international law, where a river forms the boundary between the territories of two nations, the middle line of the river is always the line of demarcation between their respective territories, no matter how the position of that middle line may change in consequence of the river receding from one bank and encroaching on the other bank.

Almaine Merchants, the Hanse (q.v.). *Almaine* was a form of *Allegmand* or *Allegmane*.

Almoner, or **Almer.** The Lord Almoner, who is usually a bishop, is an officer of the Royal Household. His function is theoretically the distribution of the royal alms. In practice, he merely carries out the ceremonial distribution of the royal alms on Maundy Thursday, the day preceding Good Friday.

Alnage, the duty levied on wool by the aulnager or alnager: abolished by the statute 11 & 12 Will. 4, c. 20.

Alnager. See AULNAGER.

Altar. What in Canon 82 of 1603 is described as the "table for the celebration of the holy communion"; is termed the altar in the Coronation service, and also in certain modern statutes, such as the Church Building Act, 1819, s. 6, and the Church Building Act, 1832. As regards churches other than those in which public worship is conducted in accordance with Evangelical or Low Church views, the use of the word "altar" has become almost universal. Down to the middle of the last century, the decided cases were to the effect that the table or altar must be capable of being moved by manual labour and that, therefore, a solid stone structure, such as is used in Roman Catholic churches, was illegal; but these decisions would appear to require reconsideration in view of subsequent decisions upon matters bearing on the question though not directly deciding it.

The canons and the rubric appear to have contemplated the use of only one communion table or altar in each church; but in some cathedrals and large churches more than one has always been used, and in recent years faculties have been granted for the use of a second altar or communion table in a side chapel of other churches.

Altar Cloth. The cloth covering the altar or communion table is, according to Canon 82

of 1603, to be "a fair white linen cloth" during the communion service, and at other times "silk or other decent stuff." The "silk or other decent stuff" may legally be of different colours at different seasons of the year; but the use of embroidered linen and lace is not a compliance with the direction to use "a fair white linen cloth."

Altarage; Altaragium. This includes not only offerings made upon the altar but also all profits receivable by the priest by reason of the altar, such as surplice fees and other minor offerings. Where *altaragium* is mentioned in old endowments, it includes small tithes (q.v.), if such inclusion is supported by usage, but not any other tithes.

Alteration. An instrument is said to be altered when any erasure or addition is made in it so as to alter its sense or effect; thus, if a seal is added to an instrument originally not under seal, so as to make it purport to be a deed, that is an alteration.

An alteration is said to be material when it affects, or may possibly affect, the rights of the persons interested in the document. Thus, if the date of a cheque is altered, that is a material alteration, because the legal obligations of the drawer may be affected by it, e.g., if the bank fails before it is presented. A material alteration invalidates the instrument even as against innocent strangers. So, the addition of a seal to an instrument is a material alteration. As a general rule, a material alteration, when made by the misfeasance or *laches* of the party for whose benefit the instrument was made, invalidates it, even as against innocent strangers; and so does an alteration made by a stranger, having the custody of the instrument, but not otherwise. See VOID.

An immaterial alteration does not appear to have any effect in avoiding the instrument, even if made by a party to it.

Alterations in wills are disregarded by the Court in granting probate, unless they are authenticated by the signatures of the testator and witnesses, or unless the fact of their having been made before execution can be proved (Wills Act, 1837, s. 21). Alterations in deeds, on the other hand, are presumed to have been made before execution unless the contrary is proved. See FAC SIMILE.

Alterius circumventio alii non praebet actionem (*Dig.* 50, 17, 49). (No action can be based upon a successful fraud.) Compare "*Allegans suam*," *etc.*

Alternativa petitio non est audienda (5 *Rep.* 40*a*). (An alternative petition cannot be heard.) This means, as regards civil proceedings, that claims for relief which involve a blowing hot and cold with regard to the one transaction will not be entertained on the common law side; but alternative claims for relief (q.v.) may be made on the Chancery side; and this was so even when this maxim was cited to the King's Bench in 1593.

As to alternative counts in indictments, see ALTERNATIVE COUNTS.

Alternative Counts. An accused person cannot be charged with more than one distinct offence in the same count of an indictment. But an indictment may be divided into separate clauses, known as counts; and in each count a separate offence may be charged as stated below. The Indictments Act, 1915, now consolidates and amends the pre-existing law as to indictments. The First Schedule to the Act contains rules which must be read with the sections; and the combined effect of the Act and the rules is that charges for any number of felonies (including treason-felony), or of misdemeanours, or of felonies and misdemeanours, may be joined in the one indictment, each, of course, being charged in a different count, if those charges are founded on the same facts, or form, or are, a part of a series of offences of the same or a similar character; and, where a felony is tried along with a misdemeanour, the jury is sworn and the accused has the same right of challenge as if all the offences in the indictment were felonies (s. 4; r. 3); but where, before or at any stage of the trial, the Court is of opinion that it is desirable that there should be a separate trial of any one or more of the counts, the Court may order such separate trial (s. 5 (3)).

As to treason, there may in the one indictment be different counts each charging a different kind of treason.

Amabyr, or **Amvabyr,** variants of "amober" (q.v.). The right to this payment out of certain lands was held by the Earls of Arundel, who, however, released it to their tenants in 1556.

Amalfi, Laws of. A code of maritime law, which was framed during the Middle Ages at the port of Amalfi, near Naples. It remained in force throughout the Mediterranean down to the end of the sixteenth century. Sir Travers Twiss' edition of the *Black Book of the Admiralty*, vol. iv., gives the code and an English translation.

Amalgamation. This takes place where two incorporated companies or societies become united by one of them being merged in the

other. The amalgamation of two companies registered under the Companies Act, 1862, or under the Companies (Consolidation) Act, 1908, is effected under s. 192 of the Act of 1908, by one of them going into voluntary liquidation and authorising the liquidators to transfer or sell its property or business to the other company in consideration of shares in the latter company to be distributed among the members of the company which is being wound up.

Life, fire, or accident assurance companies can amalgamate only with the sanction of the High Court (on application to the Chancery Division) and on complying with various formalities (Assurance Companies Act, 1909, ss. 13, 14). Industrial and provident societies may amalgamate by special resolution (Industrial and Provident Societies Act, 1893, ss. 51, 57).

Ambassadors are diplomatic agents residing in a foreign country as representatives of the States by whom they are despatched. In the strict sense of the word, an ambassador can be despatched only by certain States of superior power and dignity, but, in its modern use, the word also includes resident ministers, however they may be styled, who are despatched by any independent State. There is no express rule of law exempting an ambassador from criminal proceedings: if the facts justified such proceedings, the remedy would be to request his government to recall him or to order him to leave the country. But under the Diplomatic Privileges Act, 1708, ambassadors and their domestic servants are privileged from all arrest on civil process, and from all such process; and persons prosecuting or executing any such process of imprisonment against any ambassador or, without his leave, against his domestic servant are guilty of a misdemeanour. See CHARGÉ D'AFFAIRES; EXTRATERRITORIALITY; ALIENAGE.

Amber, a dry measure of four bushels. It was used generally during the Saxon period and in London down to the 13th century.

Ambigua responsio contra proferentem est accipienda (10 *Rep.* 68). (An ambiguous defence is to be interpreted against the party who delivers it.) This maxim is an application to a particular case of the maxim *Ambiguum placitum*, etc. (q.v.).

Ambiguis casibus semper praesumitur pro rege (*Lofft.* 248). (In cases to which the Crown is a party, the Crown is to be given the benefit of any doubt which may arise.) But this maxim cannot now be regarded as of general application. In criminal proceedings, when there is any doubt about facts, the prisoner is entitled to "the benefit of the doubt."

Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur (*Bac. Max. Reg.* 25). (A latent ambiguity in the words of a written instrument may be explained by evidence; for it arose on evidence extrinsic to the instrument and it may therefore be removed by other similar evidence.) See AMBIGUITY.

Ambiguitas verborum patens nulla verificatione excluditur (*Lofft.* 249). (A patent ambiguity in the words of a written instrument cannot be cleared up by evidence extrinsic to the instrument.) See AMBIGUITY.

Ambiguity, a double meaning. In the law as to written instruments, there are two kinds of ambiguity. A patent ambiguity is one which is apparent on the face of the instrument, as where a blank is left. A latent ambiguity is one, not apparent on the face of the instrument, which is proved by extrinsic evidence, as where a testator bequeaths property to his cousin John Jones, and it is proved that he had two cousins so named. It is commonly said that evidence extrinsic to the instrument is admissible to explain a latent but not a patent ambiguity. That statement of the law is rather too wide. As regards latent ambiguities, it is correct. As regards patent ambiguities, it is also correct as to the extreme case of a blank; for if a testator bequeaths property to "——," evidence cannot be given as to what his intention must have been. But in order to construe, if construction be possible, a will importing a patent ambiguity, the Court may receive extrinsic evidence of facts known to the testator, and so place itself in the testator's position and ascertain the meaning of the words used by him.

Ambiguum placitum interpretari debet contra proferentem (*Co. Litt.* 303 b). (An ambiguous pleading is to be interpreted against the party who delivers it.) But now under R. S. C. Ord. XIV., r. 29, the Court can order such a pleading to be struck out or amended only, however, if it be held to be embarrassing: and the mere fact that it contains allegations which are inconsistent or which are stated alternatively does not make it embarrassing.

Ambulatoria est voluntas defuncti usque ad vitae supremum exitum (*Dig.* 34, 4, 4). (The will of a deceased person is ambulatory until the latest moment of life.) That is to say, a testator can always revoke or alter his will except in certain cases of joint or mutual

wills mentioned under WILL. Coke's version is VOLUNTAS TESTATORIS EST, ETC. (q.v.).

Ameliorating or Ameliorative Waste. This consists of acts which, though technically waste (q.v.), really effect an improvement.

Amendment. This means the correction of some error or omission, or the curing of some defect, in judicial proceedings.

As regards criminal proceedings, the amendment of indictments is now governed by the Indictments Act, 1915. Where before, or at any stage of, the trial it appears to the Court that the indictment is defective, the Court shall make such order for amendment as it thinks fit, unless such amendment cannot be made without injustice, and may make such an order as it thinks fit regarding the costs of such amendment (s. 5 (1)); and, where the indictment is so amended, a note of the order for amendment is to be endorsed on the indictment, which is then to be treated as if it had been found by the grand jury in the amended form (s. 5 (2)).

As regards appeals to quarter sessions from convictions or orders of Courts of Summary jurisdiction, the Quarter Sessions Act, 1849, s 3, empowers quarter sessions to make any necessary amendment in the statement of the grounds of appeal, subject to such terms as to costs and postponement as the Court thinks fit; where the order appealed against is bad for want of proper form, quarter sessions can amend the informality, subject to such terms as to costs as the Court thinks fit (*ib.*, s. 7); and the decision of quarter sessions as regards such matters is final (*ib.*, s. 9).

Upon the return to a writ of *certiorari* (q.v.), the King's Bench Division can amend an order of a Court of Summary Jurisdiction which is bad for want of form (*ib.*, s. 7).

As regards amendments in civil proceedings in the High Court "the Court or a judge may, at any stage of the proceedings, allow either party to alter or amend his endorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for determining the real questions in issue between the parties" (Ord. XXVIII., r. 1). This order applies to amendments which the judge or a master may of his own motion think fit to make in order to determine the real questions in issue; and it applies also to amendments which a party may desire to make in his own pleadings. Without coming to the Court, the plaintiff may himself amend his statement of claim once (*ib.*, r. 2), and a defendant who has set up a counterclaim or pleaded a set-off, may himself amend such counterclaim or set-off (*ib.*, r. 3). The remaining rules of the order set out in detail the practice relating to such amendments as are within the rules above mentioned. The general effect of the order is that either party may, either with or without the leave of the Court, make any amendment which is reasonably necessary in order to bring his case properly before the Court.

As regards amendments which a party desires to make, against the will of his opponent, in the pleadings or proceedings of his opponent, he may apply, under Ord. XVI., r. 11 and under Ord. XVII., r. 2, to have parties either added or struck out; and he may apply to have a pleading struck out because it is scandalous, unnecessary, or embarrassing (Ord. XIV., r. 27), or because it discloses no cause of action (Ord. XXV., r. 4).

In the County Court, the judge is given wide powers of amendment (under the County Courts Act, 1888, s. 87), which effectually prevent the possibility of any failure of justice on merely technical grounds.

As regards Courts of Summary Jurisdiction, "No objection shall be allowed to any information, complaint or summons for any defect therein in substance or form" (Summary Jurisdiction Act, 1848, s. 1), the one thing really needful being that the accused shall know what he is charged with: so no provision is made for amendment. An order made in such a Court can, however, be amended up to the time that it is acted on or lodged with the clerk of the peace.

When a case is stated for the opinion of the King's Bench Division, under the Crown Cases Act, 1848, or by justices under the Summary Jurisdiction Act, 1857, or the Summary Jurisdiction Act, 1879, s. 33, the Court may send it back for amendment if it is defectively stated (Act of 1848, s. 4; Act of 1857, s. 7; Act of 1879, s. 33).

Amends, Tender of. This means an offer to pay a sum of money by way of satisfaction for a wrong alleged to have been committed.

The Limitation Act, 1623, s. 5, provides that in actions for trespass to land it shall be a good defence to plead that the defendant makes no claim to the land in question, and that the trespass was by negligence or involuntary, and that before action brought a tender of sufficient amends for the trespass was made.

The Distress for Rent Act, 1737, s. 20, provides that no tenant or lessee of lands can recover in any action for irregular distress by the landlord or lessor if tender of [sufficient]

ore the action was brought.

As to the defer of tender of amends, see also PUBLIC AUTE IES.

With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court (Ord. XXII., r. 3).

In an action of replevin (q.v.) to an avowry of damage feasant (that is to say, upon the defendant admitting that the cattle in question had been distrained but alleging that they had been trespassing upon and injuring his land) the plaintiff might plead a tender of sufficient amends either before the cattle were distrained (which made the taking unlawful) or before they were impounded (which made the detention unlawful).

A mensa et thoro, literally, from board and bed. Prior to the enactment of the Matrimonial Causes Act, 1857, a decree in the Ecclesiastical Courts for a divorce *a mensa et thoro* had the same effect as a decree for judicial separation (q.v.) had after the passing of that Act In the Ecclesiastical Courts a decree for the complete dissolution of marriage was known as a decree for a divorce *a vinculo matrimonii*, as to the modern equivalent of which see DIVORCE.

Amerciament or **Amercement; Amerce.** An amerciament was, in the ancient law, a pecuniary punishment for an offence in respect of which the offender stood in the court of his lord, whether the King or a subject, at the mercy (*a merci, in misericordia*) of the lord. The amount of an amercement appears to have been originally arbitrary: but gradually the amount became fixed by custom in many cases; and, after Magna Charta, the law was that a freeman should, except where the amount was fixed, be amerced only according to his means, being assessed or affeered (see AFFEERORS) by his peers, no amercement to be made for a small fault; and if the amercement were made elsewhere than in a court of record, a remedy in respect of its amount was provided by the writ *moderata misericordia*. The Court which decided that an amercement was payable was said to amerce; and their decision was indicated by the writing, in the roll of the Court, of the words, *Ideo est in misericordia*. The Court might be a Court Leet, a Court Baron, or any Court of record (q.v.).

Amerciaments were made, not only on individuals, but on counties, hundreds, and towns, such amercements being made by the superior Courts and being affeered by the coroners. The same practice prevailed with regard to amerciaments on sheriffs or officers of the superior Courts. Amerciaments so made were known as amerciaments royal.

Amerciaments also applied to judicial proceedings. A suitor, for instance, was "in mercy" if he failed in his suit, and a jury was "in mercy" for making a false presentment. Such amercements, being a source of revenue to the Crown, were levied at almost every stage of proceedings. The law and the practice as to them is exceedingly obscure. As the late Mr. Justice Stephen, in his *History of the Criminal Law*, remarks:—"How long this system lasted or by what precise steps it fell into disuse, would take more trouble to discover than the discovery is worth"

The distinction between an amerciament and a fine (q.v.) was that, except where the Courts were restrained by custom or legislation, an amerciament was entirely in the discretion of the Court, while a fine was fixed and certain. This distinction led to the amerciament being described by the old writers as a more merciful punishment than a fine. Amerciaments have long been obsolete in this country. But their meaning has been judicially considered so recently as *Nottingham Corporation, In re* [1897] 2 Q B. 502. And the adherence of American law to the common law is illustrated by the fact that in some of the States a sheriff is still punishable by amercement in certain cases of misconduct by him.

American Law. In the United States, the State of New York adopted as its law the law of England as it existed on April 19, 1775, thereby adopting both the common law and the statutes in force in England on that day. All the other original States and the States subsequently admitted to the Union did substantially the same thing, except the State of Louisiana, the law of which is based on the Code Napoleon. The law so adopted is to this day the law of the various States, except in so far as it has been modified by legislation or judicial decisions. American decisions cannot, however, be quoted as binding on English Courts; and it is doubtful whether they can properly be cited even by way of illustration.

Ami, a friend. See AMY.

Amictus; Amice; Amesse, the innermost of the vestments worn by Roman Catholic priests when celebrating Mass. In the ecclesiastical law, its use is illegal.

Amicus Curiae, a friend of the Court, that is to say, a person, whether a member of the Bar not engaged in the case or any other bystander, who calls the attention of the Court

to some decision, whether reported or unreported, or some point of law which would appear to have been overlooked.

Amittere legem terrae, to lose the law of the land, that is to say, to incur infamy (q.v.).

Ammobragium. Anciently this meant the service or payment by which land was held of a superior.

Amober, a payment anciently made to a lord on the marriage of the daughter of a tenant. In the time of Coke it still existed in Wales. See AMABYR.

Amortisation; Amortise. Amortisation means the alienation of lands in mortmain (q.v.); and in modern usage it means paying off the bonds, stock, etc., of a State or corporation. To amortise is to do either of these things.

Amotion. In its older use this meant the removal from office of a member of a corporation by the vote of his brother corporators. This was the only means by which, prior to the enactment of the Municipal Corporations Act, 1835, a corporator could be removed from office. That statute and subsequent statutes provided for removal in, for instance, cases of bankruptcy or prolonged absence; but there are many cases outside these provided for in the statutes in which a corporator would clearly be unfitted to hold office, and in any such case the only means of removing him is by amotion. The power of amotion is inherent in every corporation unless taken away by statute: and there has been no such taking away of the power. It may be observed that a corporator who dishonestly uses his office to procure advantage for himself may be amoved: but a corporator who is habitually drunk may not.

The word "amotion" also applies to the removal from office, under the Colonial Leave of Absence Act, 1782 (popularly known as Burke's Act), of colonial officers or judges. That Act empowers the Governor and Council of a colony to remove from office, subject to appeal to the King in Council, any official holding office during the pleasure of the Crown. It was passed before any colony had responsible government; and it is doubtful whether it applies to modern self-governing colonies. But, for practical purposes, it is now of importance only as regards colonies without responsible government. In a colony without responsible government, the Governor, under his commission, may, independently of his powers under the Act, suspend a judge—and of course any other official—until the pleasure of the Crown is taken through the Colonial Office.

Amoveas manus. This is a writ issuing from the King's Bench Division and commanding the restitution to a person of property belonging to him which is in the possession of the Crown: as where judgment is given against the Crown in proceedings by extent (q.v.), or where in former times the property of an outlaw was seized, and the outlawry was afterwards reversed. It is now rare: see TRAVERSE.

Under the old practice on petitions of right (q.v.), where the decision was against the Crown, the judgment was called judgment of *amoveas manus*, because it directed that the king's hands should be amoved from the property, and possession restored to the suppliant: the modern judgment in such a case merely specifies the relief to which the suppliant is entitled, but has the same effect as a judgment of *amoveas manus* formerly had, the peculiarity of it being that it transfers the seisin or possession of the property to the suppliant, without any execution issuing (Petition of Right Act, 1860, s. 10). See PETITION OF RIGHT.

Amnesty. A pardon for offences granted by an Act of Parliament which, contrary to the usual practice, is originated by the Crown instead of by the House of Commons. Illustrations are the Act of Oblivion (q.v.) and the statutes 7 Geo. 1, c. 29, and 20 Geo. 2, c. 52. Formerly an amnesty, or general pardon for antecedent offences, was sometimes granted by the Crown alone.

Amsterdam, Ordinances of. See WISBY, LAWS OF.

Amy, old French for *ami*. See ALIEN AMI. The *prochein amy* of an infant meant his next friend.

An, Jour, et Waste, year, day and waste (q.v.).

Anaesthetics. See VIVISECTION.

Ananias. To describe a person as an "Ananias" is libellous: to do the same of a newspaper may also be libellous, or may mean merely that it is an innocent conduit-pipe for false news.

Anatomy. The dissection of human corpses for the purpose of medical study is regulated by the Anatomy Act, 1832, which provides that it can be carried out only in a place licensed and periodically inspected as provided by the Act.

Ancestor. This means any person from whom real property is inherited. It is to be noted that, while no man can be the ancestor in the ordinary sense of the word of any pro-

1, 1834, a son may, under the Inheritance Act, 1833, be the ancestor, in the legal sense of the word, of his own father. Before that Act, a lineal ancestor, in the ordinary sense of the word, could not be heir to any of his issue, whether a child or a more remote descendant.

Anchor, an obsolete form of " anker " (q.v.).

Anchorage. This is a toll payable by vessels which anchor in a port, or on ground proved or legally presumed to have once been part of a port.

Anchors. The Anchors and Chain Cables Act, 1899, makes provision for the proper testing of chain cables and of all anchors exceeding 168 pounds in weight.

The Merchant Shipping Act, 1894, s. 290, specifies the anchors to be carried by emigrant ships; ss. 538-540 contain provisions to marine-store dealers who deal in, amongst other things, anchors and cables; and s. 543 provides for the marking of anchors by the makers.

Ancienne Coutume de Normandie. See GRAND COUSTUMIER.

Ancient Demesne. Manors of ancient demesne are the manors which were in the actual possession of the Crown during the reigns of Edward the Confessor and William the Conqueror, and which in Domesday (q.v.) are styled *terrae regis* or *terrae regis Eduardi*. Lord Coke calls them " the ancient demesnes of the Crown of England." The socage (q.v.) tenants of these lands are commonly known as tenants in ancient demesne, and one of the peculiarities of their tenure was that, prior to the enactment of the Real Property Limitation Act, 1833, s. 56, they could sue or be sued on questions affecting their lands only in the Court of Common Pleas (see CONSUETUDINIBUS ET SERVICIIS) or the Court of Ancient Demesne of the manor. Their lands pass by common law conveyance, independently of the lord. In addition to the socage tenants, there are customary freeholders holding not at the will of the lord: their lands pass by surrender, deed or admittance, their tenure thus having some characteristics of freehold as well as of copyhold tenure. And there are also copyholders of base tenure who hold at the will of the lord by copy of Court roll; but only the socage tenants can properly be described as tenants in ancient demesne.

The entry in Domesday is conclusive as regards the question whether a particular manor is or is not ancient demesne; but the question as to whether lands are part of a particular manor of ancient demesne is for a jury.

The copyholders of an ancient demesne form the customary court. Like other copyholders, they merely occupy part of the lord's demesne and do not hold of the manor. The Court of Ancient Demesne (corresponding to the Court Baron (q.v.)) is constituted of the tenants in ancient demesne properly so called. See ENFRANCHISEMENT; RIGHT CLOSE.

Ancient Lights. " When the access and use of light to and for any dwelling-house, workshop or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall become absolute and indefeasible . . . , unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by some deed or writing " (Prescription Act, 1833, s. 3). A right to light so acquired is known as an ancient light; and before 1833 the term applied to light enjoyed for so long a time that the memory of man ran not to the contrary.

The owner of an ancient light may increase the size of windows through which he has enjoyed the light or open new windows. But he will acquire no right to light for so much of an existing window as is an enlargement, or for a new window, until a new period of twenty years has run; and at any time within such period the owner of adjoining land may erect a screen which prevents the access of light to the enlargement or new window and may so prevent a further right being added to the existing right. *A fortiori*, when there are no windows in the side of a building which faces adjoining land, the owner of such land can erect a screen which prevents the acquisition of any right; and such a screen can of course be erected to prevent the acquisition of a right to light for any building newly erected. See ENCROACHMENT.

Ancient Messuages are houses or buildings erected before the time of legal memory, that is, before the reign of Richard I., although practically any house is an ancient messuage if it was erected before the time of living memory and its origin cannot be proved to be modern. Ancient houses frequently have rights of common (e.g. common of estovers) attached to them and to houses built in their stead on the old site, and the easements of light and support were formerly confined to ancient houses, but now the provisions of the Prescription Act, 1833 (q.v.), and the modern rules applied by analogy to cases not within the Act, have made the doctrine unimportant. See LOST GRANT.

Ancient Monuments. The general public cannot acquire a right to visit a public monu-

ment or other object of interest upon private property merely because they have been, for no matter how long a time, permitted to visit it, nor can any public right of way be to such monument or object merely because they have been permitted to pass along a path or road to it.

The Ancient Monuments Consolidation and Amendment Act, 1913, was passed in order to provide for the protection and preservation of a large number of ancient monuments specified in the schedule to the repealed Ancient Monuments Protection Act, 1882, and also of any monument or other thing (other than a place used for ecclesiastical purposes) which is of historic, architectural, traditional, artistic, or archæological interest. It provides for the acquisition by the Commissioners of Works or a local authority (which means the Common Council of the City of London and county and borough councils) of ancient monuments: for ancient monuments being placed by the owners under the guardianship of the commissioners or of a local authority; for the protection of ancient monuments which are in danger of damage or destruction, or which the owners desire to have preserved by a local authority; for public access to ancient monuments; for penalties on persons injuring ancient monuments; and for preventing the display of advertisements in a manner detrimental to ancient monuments.

The malicious destruction or damage of any monument in any church or other place of public worship or in any public place is a misdemeanour punishable on indictment under the Malicious Damage Act, 1861, s. 39, and the offender is also liable to a civil action for damages (*ib.*). The defacing of tombs in churches would appear to be also a misdemeanour at common law.

Cleopatra's Needle is specially protected by the Monuments (Metropolis) Act, 1878, s. 4, which provides that anyone who injures or disfigures, or who posts bills, or makes any writing or other mark on the obelisk shall be liable to a penalty of £5, recoverable summarily.

Ancient Rent. See ACCUSTOMED RENT.

Ancients. Certain members of the Inns of Court were formerly called ancients. Thus, in Gray's Inn, the society at one period consisted of benchers, ancients (who were the older barristers), barristers and students. In the Inns of Chancery (all of which have long ceased to exist) and in the Middle Temple all members except students seem to have been at one time termed ancients. The term "ancient" was much older than the term "barrister," which latter term is found for the first time in the Black Book of Lincoln's Inn, Trinity Term, 1455. Certain of the senior barristers in the Middle Temple are still called ancients, but only for dining purposes.

Anderson's Act, the popular title of the Betting Act, 1874.

Angary. See DROIT D'ANGARIE.

Angel; Angelet. See GOLD COINS.

Angliae jura in omni casu libertati dant favorem (*Fortescue*, c. 42). (The laws of England are in every case favourable to liberty.)

Anglo-Saxon Laws. The earliest form of redress for injuries suffered, was personal revenge. This gradually became limited by the idea of payment (wergeld) in lieu of personal revenge. The first English code of laws, or dooms as they were called, was that of Ethelbert, King of the Kentings, compiled about the year 600. Payment in compensation for injuries (bot) varied according to the rank of the person injured, or to the nature of the injury. For each of the four front teeth, six shillings; for a thumb struck off, twenty shillings, and so on. The scale provides for injuries to every part of the body even differentiating between a black bruise not covered by clothes (thirty "scaells") and one covered by clothes (twenty "scaells"); "Bot" for slaying a man varied from six to eighty shillings. If a freeman lay with another freeman's wife he paid for it with his "wergeld," and provided another wife with his own money. In addition to "bot," "wite" had also in some cases to be paid to the King as punishment.

Later collections of dooms are Ine's, Offa's, Alfred's, Edward the Elder's, Athelstan's, Edmund's, Edgar's and Ethelred's.

The courts of justice were, the Sheriff's Tourn, which met every six months for criminal cases under the Shire Reeve, who presided over the landowners, the Hundred Court, which met every four weeks for civil cases, and the Witenagemote (q.v.).

There were four forms of proof: Compurgation, ordeal, witnesses and charters, that is to say, documents.

See Liebermann, *Gesetze der Angelsachsen*, 2 vols., 1903-12; Attenborough, *Laws of the Earliest English Kings*, 1922; *Essays in Anglo-Saxon Law*, 1876; Thorpe, *Ancient Laws of England*, 2 vols., 1840.

Aniens; Aniente, old French for "void."

Animals. See CRUELTY; HORSE BREEDING; VIVISECTION.

Animals, Diseases of. The Diseases of Animals Act, 1894 (as amended by the Diseases of Animals Acts, 1896 and 1903, as

dogs by the Dogs Act, 1906, s. 2, as further amended respecting the shipment of horses by the Diseases of Animals Act, 1910, and by the Exportation of Horses Act, 1914, and as further extended by the Poultry Act, 1911), gives the Ministry of Agriculture and Fisheries, and certain local authorities, wide power with regard to certain diseases amongst animals, and has been extended so as to enable the Ministry to deal, both under the Acts and under statutory orders (which it is empowered to make) not merely with disease, but also with such matters as the proper transportation of horses and poultry. A very large number of acts or omissions in contravention of the Acts, or of the statutory orders, are punishable upon summary conviction.

Animals ferae naturae are such as are of a wild and untameable disposition, such as deer, fish, etc. Independently of the statutory provisions, known as the game laws, applicable to these animals, they are exceptions from some general rules of law: thus a man can have no complete ownership in them, although he may have the possession of them; and, therefore, as soon as they cease to be in his actual possession, anyone else may seize and keep them. A man may, however, have a qualified ownership in animals *ferae naturae*, either by taming and confining them (or, as it was anciently termed, *per industriam*), or by having the privilege of keeping them in a forest, park, or other franchise (q.v.), for in either of those cases no other person can lawfully take them so long as they remain in confinement. Again, on the death of a man, the deer in his park, the rabbits in his warren, the doves in his dove-house, and the fish in his pond, pass with the realty and do not, as in the case of domestic animals and other chattels, pass with the personalty.

At common law animals *ferae naturae* which are fit for human food are the subject of larceny if they either are in confinement or have actually been tamed; but at common law there can be no larceny of such animals as a lion or a gorilla, even though they are tame or kept in confinement.

Under the Larceny Act, 1861, s. 21, anyone stealing any bird, beast or other animal ordinarily kept in a state of confinement or for any domestic purpose, not being the subject of larceny at common law, was declared to be guilty of larceny. This however still, for instance, left it no offence to steal a lion. But now, under the Larceny Act, 1916, s. 1 (3), everything which has value and is the property of any person is capable of being stolen: and that covers the case of a lion kept in a cage, or of crocodiles in a tank.

Animals, Liability for. The owner or the person having the care of domestic animals which are ordinarily kept in confinement (such as horses and cattle) is liable, if they are allowed to stray, for damage which is, but he is not liable for damage which is not, the natural and probable consequence of their straying. Although no man is under a duty to fence his land against cattle driven along a highway adjoining his land, yet, apart from negligence, the owner of cattle which are being lawfully driven is not liable for damage done by their straying off the highway. Under the Highways Act, 1864, s. 25, it is an offence, punishable summarily, to allow horses, cattle, swine, sheep or goats to stray or be on the highway; but an owner of cattle, fowls, etc., who allows them to stray from his land upon an adjoining highway is not liable in damages for any accident which results from their being on the highway. Under the Town Police Clauses Act, 1847, s. 24, cattle straying on the highway may be impounded.

The owner, etc., of domestic animals not ordinarily dangerous, such as dogs (but see below), cattle or horses, is not liable for injuries viciously inflicted by them on human beings, unless in a case where he had knowledge that the particular animal in question was dangerous to human beings. As to dogs, the owner, whether he knew the dog to be dangerous or not, is not liable if the injured person is a trespasser; but he is liable for injuries done by them to cattle, horses, mules, asses, goats, sheep and swine, even where he has no knowledge of there being any mischievous propensity (Dogs Act, 1906, ss. 1, 7), and the damages claimed may, if not exceeding £5, be recovered before a Court of Summary Jurisdiction (*ib.*, s. 1 (3)); and, for the purposes of the above-mentioned sections, the occupier of the house, or, in the case of lodgings, part of a house, in which the dog is permitted to be, is to be deemed the owner of the dog (*ib.*, s. 1 (2)).

One who keeps a wild animal ordinarily dangerous, such as a lion, is bound to keep it safely and the fact that it escaped without negligence on his part is no defence to an action for any injury or damage done by it. But the owner of such an animal is not liable for injury which another person brings on himself, as, for instance, by putting his hand through the bars of a cage. As to BEES, see that title.

Keeping swine so as to be a nuisance to any

person is an offence punishable summarily under the provisions of the Public Health Act, 1875, s. 47: and the keeping of any animal so that it is injurious to health is a nuisance which may be dealt with summarily under that Act (*ib.*, s. 91). Under a bye-law of the London County Council, made July, 1898, under the Municipal Corporations Act, 1882, s. 23, and the Local Government Act, 1888, s. 16, no person may, within the administrative county of London, keep any noisy animal which is a serious nuisance to neighbouring residents; and after the expiration of a fortnight from the service of a notice signed by three householders resident within hearing of the animal the owner of the animal is liable to summary proceedings. Except where a local Act, or a bye-law made under statutory powers, is in force, there is, however, no means of dealing summarily with the nuisance caused by a noisy animal, and recourse must be had to the remedies indicated under NUISANCES.

If a man keeps unusually large numbers of game, such as pheasants or rabbits, on his land, or if he permits his domestic fowl to wander, he is liable at common law for damage done by any of them on the land of another.

Where the crops of a tenant are damaged by deer, pheasants, partridges, grouse, or black game, which neither he nor anyone (other than the landlord) claiming under him has the right to kill, he can, where the damage exceeds one shilling per acre, recover compensation from the landlord by arbitration in default of agreement as to the amount (Agricultural Holdings Act, 1908, s. 10). See RATS AND MICE.

Animo, with the intention: used, for instance, in the expression *animo furandi* (with intent to steal).

Animus, an intent or intention.

Animus cancellandi, the intention of cancelling. Used in connection with wills.

Animus et factum, the combination of the intention with the act. This is required for a change of domicile; and also for the effectuating of most other legal acts.

Animus furandi, the intention of stealing. This intention, which may be, and generally is, inferred from acts, is necessary to constitute the offence of larceny.

Animus hominis est anima scripti (3 *Bulstr.* 65). (The intention of man is the soul of what he writes.) This maxim applies to the interpretation of deeds. It really means that deeds should, if possible, be construed so as to give effect to the expressed intention of the parties.

Animus manendi; Animus morandi, the intention of remaining. The phrase is applied in connection with change of domicile.

Animus non revertendi, the intention of not returning. Animals accustomed to go and return—e.g. pigeons in a dovecote—continue the property of their owner until they lose the *animus revertendi*, or intention of returning; and they are said to lose that intention when they in fact finally cease to return.

Animus quo, the intention with which.

Animus recipiendi, the intention of receiving.

Animus revertendi. See ANIMUS NON REVERTENDI.

Animus revocandi, the intention of revoking. Used of wills.

Animus testandi, the intention of making a will.

Anker, an obsolete measure of capacity which contained ten of the old wine gallons, equivalent to eight and one-third imperial gallons.

Annates. This means one year's whole profits of a spiritual preferment. It is also used as synonymous with first fruits or *primitae*, that is to say, the first year's whole profits of every spiritual preferment, which down to the reign of Henry VIII. were payable to the Pope; under the statutes 23 Hen. 8, c. 9, and 25 Hen. 8, c. 20, they became part of the revenues of the Crown. Under the statute 7 Eliz. c. 4, and various subsequent statutes, benefices of less clear value than £50 a year were discharged from them; in 1703 they were transferred to the Commissioners of Queen Anne's Bounty (q.v.), by the statute 2 Anne, c. 11.

By Order in Council made November 27, 1852, pursuant to Queen Anne's Bounty Act, 1838, s. 19, annates or first fruits were commuted for an annual payment of one per cent. on the annual value of the living.

See FIRST FRUITS, COURT OF; TENTHS.

Annexation. This takes place when a State, either by occupation or by conquest, adds to its territory other territory which previously had not belonged to it. There is no rule of international law that contractual obligations which had been incurred by a conquered State, before the outbreak of the war which resulted in annexation, pass upon annexation as a matter of course to the conquering State; the rule, in fact, being that the extent to which, if at all, such obligations are adopted by the conquering State is entirely in the option of the conquering State. Thus, where land has been ceded before the outbreak of war by the conquered State to a private individual, the

after annexation, be compelled by any legal process to recognise the grant.

Annua pensione, De. Anciently, when one of the King's chaplains had no ecclesiastical emolument, the King could by means of this writ demand for the chaplain from an abbot or prior any annual pension which was due to the Crown by the abbot or prior.

Annuity. This is a yearly payment of a certain sum of money granted to another in fee, or for life, or for a term of years, and charging the person of the grantor, although it may also be made to charge his real estate, in which latter case it is most commonly called a rent-charge. An annuity in fee—that is to say, a perpetual annuity—may be limited either to the heirs or the executors of the grantee: when it is limited to the heirs of the body of the grantee it is an annuity in fee simple conditional, for the statute *De Donis* (see ESTATE TAIL) does not apply.

The Apportionment Act, 1834, first made annuities apportionable. Under the statute 53 Geo. 3, c. 141, annuities for lives granted by way of the repayment of money lent required to be inrolled in Chancery; but now, under the provisions of the Judgments Act, 1855, s. 12, and the Judicature (Officers) Act, 1879, s. 5, they require to be merely registered in the Central Office of the Supreme Court. Annuities may also be regarded as legacies payable, not in mass at one time, but by instalments every year or aliquot part of a year; therefore the word "legacies" in general comprises the word "annuities."

If an annuity is given *simpliciter*, it is an annuity for the life only of the annuitant; or, in the case of joint annuitants, for the life of the longest liver of them. Where, however, an annuity is given to A in general terms, and the gift is accompanied with a direction to provide for the same out of the proceeds of property, that is a perpetual annuity, unless the direction is mere surplusage, e.g. merely directs payment out of the "general effects" of the testator; and, of course, the testator may, by express words, give a perpetual annuity.

Sometimes an annuity is payable only out of income, and sometimes it is a charge on the *corpus* itself of the estate, in which latter case the annuitant may, if the income is insufficient, require a sale of a sufficient part of the *corpus*, and will even be entitled to a prospective order for the necessary successive future sales. An indefinite trust to receive rents for payment of an annuity is a charge of the annuity upon the *corpus*, and a direction to purchase an annuity for A entitles A to have the purchase-money paid over to him or her, although the testator may have directed the contrary; and if the intended annuitant is dead, his personal representatives will be entitled to the purchase-money, although the purchase-money is to consist of the proceeds of land sold.

An annuity will abate with general legacies unless the annuity is given as a specific interest in land, when it will only abate with the other specific legacies.

When an annuity is given by will, the first payment thereof is to be made, in the absence of express directions otherwise directing payment, one year after the testator's death, or if successive interests for life and in remainder are given by way of annuity out of a sum of money directed to be placed out to answer it, then two years from the testator's death. The annuity in this latter case is merely interest on a legacy; and the legacy is itself not payable for a year.

Annuity, Action of. This, down to 1875, was one of the prescribed forms of action (see ACTIONS). It was for the recovery of an annuity (q.v.) issuing out of lands.

Annul. To annul a judicial proceeding is to deprive it of its operation, either retrospectively or only as to future transactions. Thus, annulling an adjudication in bankruptcy puts an end to the proceedings, without invalidating any act previously done by the official receiver or trustee, and makes the property of the bankrupt revert to him, subject to such terms, if any, as the Court deems fit (Bankruptcy Act, 1914, s. 29).

Annunciation, Feast of, the 25th of March, popularly known as Lady Day. It is one of the customary quarter days (q.v.). See FAST DAYS; FEASTS; OLD LADY DAY.

Annuo reditu, De, a writ which anciently lay for the recovery of a yearly rent.

Annus, dies et vastum, year, day, and waste (q.v.).

A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative (*Hob.* 336). (From the fact that a thing cannot be done you necessarily draw the conclusion that it is not done; but from the fact that a thing has not been done you are not justified in concluding that it cannot be done.)

Ansel, Ansul. See AUNCEL.

Answer. In ordinary actions in the High Court an answer is an affidavit in answer to interrogatories; it is like any other affidavit in form, and it requires to be filed; if it is longer

than ten folios it must (Ord. XXXI., r. 9) be printed. The answer necessarily follows the terms of the interrogatories, either giving information asked for, or admitting or traversing (denying) the allegations impliedly contained in them. If the party interrogated fails to answer, or fails to answer fully, he may be required to answer *viva voce* (Ord. XXXI., r. 11).

A petition (not being a petition for an order of course) in the Chancery Division is "answered" in the name of the senior registrar (Ord. LXII., r. 18) except in the case of petitions presented in the district registries of Liverpool or Manchester, when they are "answered" by the local registrar (R. S. C., May, 1887, r. 2). A petition is "answered" by writing on it a fiat or memorandum appointing the day on which it is to be heard. See FIAT.

In matrimonial suits in the Probate, Divorce and Admiralty Division, an answer is the pleading by which the respondent puts forward his defence to the petition.

In the Ecclesiastical Courts, the defendant is said to answer the libel (q.v.) when he gives in an allegation (q.v.). But in all civil causes in those Courts, the plaintiff is also entitled to what are called the personal answers of the defendant, which are answers on oath to the several articles of the libel.

Under the old Chancery practice, an answer by a defendant was, in ordinary cases, not only an answer to the plaintiff's interrogatories, but also a pleading, inasmuch as it contained the defendant's statement of his case; hence, in complicated cases, answers were frequently divided into two parts, one containing the defendant's statement, or the facts on which he relied, and the other giving his answers to the interrogatories. If no interrogatories were delivered, the defendant might put in a voluntary answer, containing such facts as he thought material to his case. A plaintiff's answer to a concise statement and interrogatories (q.v.) was similar to a defendant's answer to interrogatories, except that it was confined to giving the discovery required. Every answer had to be signed by counsel, sworn by the party, and filed. See now STATEMENT OF DEFENCE.

Under the old Admiralty practice, the defendant's first pleading (which is now termed his statement of defence) was called his answer.

Antecedent Debt. The same as PAST DEBT (q.v.).

Antejuramentum, the preliminary oath which each party anciently had to take before any trial or purgation. The accuser swore that he would prosecute; the accused swore that he was innocent. See Leg. Hen. 1, c. 66.

Ante litem motam, before litigation was in contemplation. See LIS MOTA.

Antenatus, a child born before the marriage of its parents. In England or Ireland subsequent marriage does not legitimate the *antenati*, but it does in Scotland and in most Continental countries. A child legitimated in Scotland, or elsewhere, by subsequent marriage inherits real estate in Scotland, though not in England or Ireland; but in England and Ireland, as well as in Scotland, he succeeds to personal estate. Such legitimation can take place only where the parents were at the time of the birth domiciled in a country the law of which permits legitimation *per subsequens matrimonium*. See MERTON, STATUTE OF; MATRIMONIUM, ETC.

Anthrax, a disease of animals (see ANIMALS, DISEASES OF) which is communicable to human beings

The Anthrax Prevention Act, 1919, s. 1, empowers the King, by Order in Council, to prohibit the importation into the United Kingdom of goods infected or likely to be infected with anthrax. Such an order was made on 9th February, 1920, in respect of shaving-brushes manufactured in or exported from the empire of Japan. It is entitled the Anthrax Prevention (Shaving Brushes) Order, 1920.

Anticipation. In conveyancing, anticipation is the act of assigning, charging, or otherwise dealing with income before it becomes due. A clause restraining anticipation is generally introduced into a settlement of property on a woman, in order to protect her from the influence of her husband by preventing her from depriving herself of the benefit of the future income. Such a restraint cannot be imposed in the case of anyone except a woman, and the restraint only exists so long as she is married. Under the Conveyancing Act, 1911, s. 7, a judge of the Chancery Division may bind the interest of a married woman, notwithstanding that she is so restrained, if she consents and if it appears to be for her benefit that her interest should be bound. And when a married woman institutes any legal proceeding, the Court before which such proceeding is pending may order the costs of the opposite party to be paid out of property subject to a restraint on anticipation (Married Women's Property Act, 1893, s. 2). See RESTRAINT ON ALIENATION.

In patent law, a person is said to have been anticipated when he patents a contrivance already known within the United Kingdom.

Antiqua Statuta, the ancient collective name of all statutes, including the Statutes of Uncertain Date, passed before the reign of Edward III.; also termed *Vetera Statuta*. Both terms mean the Old Statutes. Compare NOVA STATUTA.

Apices juris non sunt jura (*Co. Litt.* 283, 304). (The extremes of law make bad law.) Coke describes such *apices* as "curious or nice exceptions tending to the overthrow or delay of justice." Compare the maxim *Summum jus, summa injuria*, and the aphorism "Hard cases make bad law." Coke cites this maxim along with QUI HAERET, ETC.

Apology. When an action is threatened or brought against a person for a libel published in a newspaper or other periodical publication, he may plead that it was inserted without actual malice, and without gross negligence, and that an apology for the libel has been published (Libel Act, 1843, s. 2); but such plea is to be treated as a nullity unless the defendant also pays a sum of money into Court as amends to the plaintiff (Libel Act, 1845). The fact that money has been paid into Court is not to be mentioned to the jury (Ord. XXII., r. 22).

Any person sued in an action for defamation may prove in mitigation of damages that he has made or offered an apology to the plaintiff (Act of 1845, s. 1).

Apostasy. This is a total renunciation of Christianity by one who has been educated in or professed that faith within this realm. It is punishable by incapacity to hold any office, and, for the second offence, by incapacity to bring any action or to be guardian, executor, legatee, or grantee and by imprisonment for three years (9 Will. 3, c. 35, s. 1); but prosecutions for the offence are now unknown.

Apostato capiendo, De, a writ which anciently was directed to the sheriff to empower him to seize, and hand over to the abbot or prior one, who, having entered an abbey or monastery, had left it and was wandering about the country.

Apothecaries' Weight, a weight in which twenty of the 7,000 grains which make the imperial standard pound go to one scruple, three of such scruples make one drachm, and eight of such drachms make one ounce. The apothecaries' ounce, therefore, like the ounce troy, contains 480 grains. This weight also comprises the fluid ounce and the fluid drachm, which, in the case of distilled water at 62 deg. Fahr., weigh respectively 437.5 and 54.66 grains. As to the use of apothecaries' weight, see AVOIRDUPOIS.

Apothecary. An apothecary is one who prepares and sells drugs prescribed either by himself or by others; whereas a qualified medical practitioner under the Medical Acts, not being an apothecary, may prepare and sell only drugs which he himself has prescribed, and a chemist may supply drugs but may not prescribe them. An apothecary must hold the certificate, that is to say, the licence, of the Society of Apothecaries, London, which was incorporated by royal charter in 1617 and is now regulated by the Apothecaries Act, 1815, and by the Apothecaries Act Amendment Act, 1874. No person is to practise as an apothecary, or as an assistant to an apothecary, unless holding the society's certificate (Act of 1815, ss. 14, 17); and no person can recover for work done or drugs supplied as an apothecary unless he proves that he is certified (*ib.*, s. 21), but under the Medical Act, 1886, s. 6, any medical practitioner, registered under the Medical Acts, may recover for medical services rendered or drugs, etc., supplied. Any person, practising as an apothecary or as an assistant-apothecary without the society's certificate, is liable to forfeit £20 if he acts as an apothecary, and £5 if as an assistant, such penalties being recoverable by civil action (Act of 1815, s. 20); and any person falsely pretending to be an apothecary is liable on summary conviction to a penalty of £20 (Medical Act, 1858, s. 40). The Society must publish a list of licentiates each year (Act of 1815, s. 23) and may strike off the list anyone convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or who has been adjudged by the General Council (q.v.) to have been guilty of infamous conduct (Act of 1874, s. 4); and any person so struck off ceases to be a certified person.

Apothecaries who are registered as medical practitioners pursuant to the Medical Act, 1858, s. 15, are exempt from service in parish offices or in the militia (*ib.*, s. 35) or on juries, including coroners' juries (Juries Act, 1870, s. 9). See WARDEN.

Apparent Easements. See EASEMENTS.

Apparitor, an officer of the Ecclesiastical Courts whose duty it is to summon defendants and witnesses to appear and, generally, to execute the proper orders and decrees of the Court. During the seventeenth and eighteenth centuries the term was used as the name of an officer of a civil Court who performed functions analogous to those of the ecclesiastical apparitor.

Appeal. In its widest sense, this means any

proceeding taken to rectify an erroneous decision of a Court by bringing it before a higher Court. In this sense it includes appeal by way of case stated (q.v.), or by way of *certiorari* (q.v.). But the term is more properly used of appeals made *eo nomine* under various statutes and the rules made thereunder. Of such appeals there is so large a number, and the procedure with regard to them varies so much, that no attempt can be made to deal exhaustively with them in a work of this kind.

In the Supreme Court of Judicature, every appeal from a judgment or order of the High Court to the Court of Appeal (q.v.) is in the nature of a rehearing (q.v.), and is brought by a simple motion in the Court of Appeal, asking that the judgment or order complained of may be reversed, discharged, or varied (R.S.C., Ord. LVIII). Appeals can also be brought on interlocutory proceedings in chambers, from the master, chief clerk, or district registrar, to the judge in chambers. In the King's Bench Division, an appeal lies from the judge in chambers to the Divisional Court, and thence to the Court of Appeal, while, in the Chancery Division, the judge in chambers may either direct the matter to be argued before him in Court (after which an appeal lies to the Court of Appeal) or may give leave to appeal direct to the Court of Appeal.

Appeals to the House of Lords are brought by petition of appeal, which is lodged by the appellant at the Parliament Office and is presented to the House at its next meeting by the Lord Chancellor or Clerk of the Parliaments, after which an order requiring the respondent to lodge his printed case is issued and served on him. If he intends to contest the appeal, he enters an appearance, and the appellant gives security for costs. Each party then lodges a printed case stating the facts and reasons in his favour, and an appendix is also prepared containing printed copies of the documents and other evidence used in the Court below. See also APPELLATE JURISDICTION ACTS.

Appeal of Death. This is identical with appeal of felony (q.v.).

Appeal of Felony. This, after the Norman Conquest, was an accusation of felony made by a private individual, as distinguished from an accusation of felony made by indictment of a grand jury or by coroner's inquisition; and under the statute 3 Hen. 7, c. 46, an appeal of felony might be brought against an alleged murderer, even after he had been acquitted by a jury. The person charged had the right to trial by battle, which took place between him and the accuser, or, in certain cases, the representative of the accuser, the combatants being each armed with a leather shield and a cudgel forty-five inches long, and having to fight for a day or until one of them gave in. So crude a method of determining the innocence or guilt of an accused person not unnaturally become obsolete. But so recently as 1817 an appeal of felony was brought against one Thornton for murder after he had been acquitted by a jury; and Thornton, when called on to plead, pleaded as follows, "Not guilty, and I am ready to defend the same with my body," at the same time throwing his glove on the floor of the Court. The Court thereupon allowed the claim so made for trial by battle; but the accuser declined to accept the challenge, and Thornton was discharged. This case led to the enactment of the statute 59 Geo. 3, c. 46, which abolished all appeals of felony and trials by battle.

In appeals of felony other than of mayhem (q.v.), if the appellant was successful, the other party suffered the punishment to which he would have been liable if originally convicted; in appeals of mayhem, the successful appellant received damages.

The king's pardon was no bar to an appeal of felony.

Appearance. In the primary sense of the word, the parties to a proceeding or application (e.g., a petition, motion, summons, etc.) are said to appear on it when they are present before the Court, judge, etc., when it is heard. A party appears either in person or by his counsel or solicitor.

In the secondary sense of the word, appearing or entering an appearance is a formal step taken by a defendant to an action after he has been served with the writ of summons: its object is to intimate to the plaintiff that the defendant intends to contest his claim; or, in a friendly action, to take part in the proceedings in the action. See DEFAULT. In some cases persons may appear who are not defendants to the action, e.g. persons desiring to intervene in probate and admiralty actions (see INTERVENTION) or in actions for the recovery of land, and persons cited to appear. See CITATION; COUNTERCLAIM.

Appearance is effected by delivering to the proper officer of the Court a memorandum giving the title of the action, stating that the defendant appears in person or by his solicitor, as the case may be, giving the address of himself or his solicitor (see ADDRESS FOR SERVICE) and also a duplicate memorandum for sealing (Ord. XII., rr. 8, 10, 11), and by, on the same

day, giving notice of his appearance to the plaintiff (*ib.* r. 9).• Special forms of appearance are used in actions for the recovery of land: thus, any person appearing in such an action may by his appearance limit his defence to a part of the property (*ib.*, rr. 28, 29).

Where a defendant desires to object to the regularity of the proceeding by which the plaintiff seeks to compel his appearance, he may, by leave of a master, enter a conditional appearance or an appearance under protest, and then apply to the Court to set aside the plaintiff's proceeding; or (*ib.* r. 30) he may, without entering an appearance, move to set aside the service of the writ.

As to appearance generally, see the rules of Ord. XII. which are not mentioned above.

If a defendant does not appear the plaintiff may in some cases sign judgment, and in other cases proceed with his action. See JUDGMENT.

"Appearance" had a peculiar meaning in bailable process (see BAIL), where, to effect a complete appearance, the defendant was required to give *bail to the action*, that is, to provide two sufficient sureties who entered into a recognisance to the effect that if judgment were given against him he should either satisfy the plaintiff or render himself to prison; the ordinary kind of appearance was called "common appearance" by way of distinction. Bailable process having been abolished in ordinary actions, this kind of appearance now only exists theoretically in proceedings in the Mayor's Court (see FOREIGN ATTACHMENT), where, if the defendant wishes to dissolve (that is, put an end to) an attachment of his property, he must appear according to the custom, either by putting in bail, by rendering himself to prison, or by payment into Court of the debt or the value of the property attached; when he has done one of these things his appearance is said to be perfected.

Appellate Jurisdiction Acts, 1876, 1887, and 1913. These statutes regularised and put into modern form the procedure of the House of Lords as a Court of Appeal. The appellate jurisdiction of the Lords dates back to, at any rate, the thirteenth century, but until 1876 it was not the subject of any Act of Parliament.

Under s. 3 of the Act of 1876, an appeal lies to the House of Lords from any judgment or order of the Court of Appeal. No such appeal can be heard unless there are present at least three of the Lords of Appeal, that is to say, of the following persons: (1) The Lord Chancellor; (2) the six Lords of Appeal in Ordinary (q.v.); (3) peers who have been Lord Chancellor of Great Britain or Ireland, or judge of one of the superior Courts in Great Britain or Ireland (Act of 1876, ss. 5, 25). There is nothing in law to prevent any other peer from sitting and voting on an appeal, but during the hundred years before 1876 other peers had taken no part in the appeal proceedings of the House; and since 1876 the same practice has been observed, except once in 1883, when a somewhat eccentric peer persisted in adjudicating on one particular case, with regard to which, however, his interposition was harmless, as he voted with the one Lord of Appeal who dissented from the judgment of the three other Lords of Appeal who were sitting.

Appeals to the House of Lords from the High Court of Appeal for Ireland, which is created by the Government of Ireland Act, 1920, are governed by s. 49 of that Act.

See also BANC, or BANCO, SITTING IN; LORDS OF APPEAL; LORDS OF APPEAL IN ORDINARY.

Appendant and Appurtenant. These words are used to describe a hereditament which is annexed to another hereditament, the latter hereditament being the principal hereditament and the hereditament which is annexed thereto being the adjunct or accessory. A grant of the principal will carry the adjunct without any express mention of the latter. Things appendant can be claimed only by prescription (q.v.), while things appurtenant can be claimed either by prescription or by express grant. The principal and the adjunct cannot, where the adjunct is a thing appendant, be both incorporeal or both corporeal, but this rule does not always apply where the adjunct is a thing appurtenant. The principal and the adjunct must be such that they can suitably be enjoyed together; so that common of estovers (q.v.) cannot be appurtenant to land without a house, nor common of pasture to a house without land.

Once a thing appendant has been separated from the principal so as to be held *in gross*, or independently, it can never become appendant again, though it may be re-annexed to the principal so as to become appurtenant.

Appendix. In the practice of the House of Lords and Privy Council in appeals, the appendix is a printed volume containing the material documents or other evidence used in the Court below and referred to in the cases of the parties. See APPEAL; CASE.

Applicatio est vita regulae (2 *Bulstr.* 79). (Application is the life of a rule.) Lord Coke said in the case where the maxim is found: "We all here agree in the principles, but we

differ in the application; and *applicatio est vita regulae.*"

Apply; Liberty to Apply. In the Chancery Division, all orders which are not of a final character necessarily carry with them liberty to apply to the Court; but where the order is final, application under it can be made in a summary manner, and without setting the case down again, only if the order directs that the parties shall be at liberty to apply to the Court or in chambers; and no application made under such direction will enable the Court to deal with any matters other than those which arise in the working out of the order.

Appointment, Power of. This means a power, given by deed or will, to appoint persons, or a person, to take an estate or interest in property, whether real or personal.

An appointment takes effect as if the estate limited by the power had been created by the instrument which conferred it. Thus, if A conveys land to such uses as B shall appoint, and B appoints to himself for life, with remainder to his eldest son in tail, this has the same effect as if A had originally conveyed the land to B for life, with remainder to B's eldest son. But with regard to the rule against perpetuities, there is a distinction between general and particular powers, for under a general power the donee can appoint in any manner he pleases, while under a particular power (that is, a power to appoint to one or more of a limited number of persons) no estate can be created if it would have been invalid in the original deed by reason of its infringing the rule against perpetuities. See PERPETUITY.

An appointment to one or more of the objects of a particular power, to the exclusion of the others, is called an exclusive appointment.

Formerly an appointment of a merely nominal share of the property to one of the objects (in order to escape the rule that an exclusive appointment could not be made unless it was authorised by the instrument creating the power) was considered illusory and void in equity, but this rule has been abolished by the Powers of Appointment Act, 1874, s. 1. An appointment is excessive when it is made to persons not objects of the power, or for a greater estate or interest than is permitted by it, or subject to conditions unauthorised by it.

In bankruptcy, creditors are entitled to property which the bankrupt might have appointed to himself (Bankruptcy Act, 1914, s. 38 (2) (*b*)), that is to say, over which he had a general power of appointment.

Apportionment. This word applies to rents, annuities, and common.

First, as applied to rents, it denotes a division of the rent in certain proportions; and as to rents-service, these (although originally and in their own nature indivisible) have been divisible since the statute of *Quia Emptores* (q.v.), and as to rents-seck and rents-charge (the distinction between which has been abolished by the Landlord and Tenant Act, 1730, and the Law of Property Amendment (Lord St. Leonards') Act, 1859, s. 10), the release of part of land subject to a rent-charge does not release the other part when it is intended that the other part should remain unreleased. By the Distress for Rent Act, 1737, s. 15, rents secured on leases are made apportionable between a landlord (tenant for life) deceased and the succeeding remainderman or reversioner—an apportionment which was extended to all rents by the Apportionment Act, 1834, and the Apportionment Act, 1870. Secondly, as applied to annuities, these were made apportionable by the Apportionment Act, 1834, and by the Apportionment Act, 1870. Section 2 of the last-mentioned Act is as follows:—"From and after the passing of this Act [Aug. 1, 1870], all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly." Thirdly, as applied to common, upon a purchase by the commoner of part of the land over which his right of common exists, the right may be apportioned, and it makes no difference, apparently, that the right of common is that of common *sans nombre*, as to which see COMMON.

At common law a condition of re-entry in a lease was said not to be apportionable by act or agreement of the parties: that is, if the lessor granted a licence to the lessee to do the act forbidden by the condition, or waived a breach already committed, the condition was gone for ever, although the licence or waiver was expressed to be limited to a particular act or to a part of the land. This absurd rule was abolished by the Law of Property Amendment Act, 1859, ss. 1, 2, and the Law of Property Amendment Act, 1860, s. 6; and now also, under s. 3 of the Act of 1859, conditions of re-entry on non-payment of rent are apportioned on severance of the reversion, while

under the Conveyancing Act, 1881, s. 12, all conditions contained in leases made after 1881 are also apportionable on a severance of the reversion.

By the common law there was no apportionment of rent in respect of time, rent not being regarded as accruing due *de die in diem*. Accordingly, if the lessor was an owner in fee simple, or (being owner for a limited estate) had a power of leasing, then upon his death in the interval between two days of payment, his executors were not entitled to any part of the rent in respect of the accrued portion of the interval, but the rent for the entire interval went to the person who took the reversion, whether as heir-at-law, devisee, or remainderman. And if the lessor was tenant for life, or for any other limited estate, and had no power of leasing, upon his death in the interval between two days of payment, his executors were not entitled to any part of the rent in respect of the accrued portion of the interval, and neither was the reversioner entitled to that part of the rent, but that part ceased to be payable at all by the tenant to anyone.

However, by statute rents have been made apportionable, the principal statutes being the following:—

By the Distress for Rent Act, 1737, s. 11, when any tenant for life, not having a power of leasing, dies on or before the day on which the rent is payable by his lessee, the executors of such tenant for life are entitled to the whole or a proportion (as the case may be) of the rent in respect of the accrued interval or accrued portion thereof; and it has been held that the statute extends to a tenant in tail. The statute did not, however, extend to land tax or quit rents; neither were such rents apportionable in equity; and it was doubtful if it extended to tenancies *pur autre vie*. Accordingly, the Apportionment Act, 1834, was enacted and provides that rents reserved and made payable on any demise or lease of lands, tenements, or hereditaments which have been and shall be made, and which leases or demises determined or shall determine on the death of the person making the same (although such person was not strictly tenant for life thereof) or on the death of the life or lives for which such person was entitled to such hereditaments, shall, so far as respects the rents reserved by such leases and the recovery of a portion thereof by the person granting the same, his or her executors or administrators (as the case may be), be considered as within the provisions of the Distress for Rent Act, 1737; and that all rent service reserved on any lease by a tenant in fee or for any life interest, or by any lease granted under any power (being in each case a lease granted after the 10th of June, 1834), and all rents-charge and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description in the United Kingdom of Great Britain and Ireland made payable or becoming due at fixed periods under any instrument (being an instrument that came into operation after the said 10th of June, 1834), should be apportioned so and in such manner that, on the death of any person interested in the said respective payments, or on the determination otherwise of the interest of such person therein, he or she, and his or her executors, administrators or assigns, should be entitled to a proportion thereof, according to the time which should have elapsed from the commencement or last period of payment thereof respectively (as the case may be) including the day of the death or other determination of the interest of such person, subject nevertheless to all just allowances and deductions in respect of charges thereon respectively, the remedies for the recovery of such proportion to become available when the entire amount is become payable, and not before; such remedies to lie and be directed against the person or persons who (but for the Act) would have been entitled to receive and to retain the entirety of the said respective payments.

By the Landlord and Tenant Act, 1851, s. 1, when the lease or tenancy, being at a rack rent, shall determine by the death or cesser of the interest of the landlord entitled for his life or for any uncertain interest, instead of claims to emblements, the principle of an apportionment of rent is introduced, the tenant, in substitution for his claim to emblements, being allowed to hold on till the end of the current year of his tenancy, upon the terms of the old holding, whereupon he goes out without any notice to quit either given or received.

By the Lands Clauses Consolidation Act, 1845, s. 119, and under the Church Building Act, 1854, s. 1, the principle of apportionment of rent is also adopted when part only of the land comprised in the lease or underlease (as the case may be) is required for the purposes of the works authorised by those Acts respectively.

By the Apportionment Act, 1870, s. 2, *supra*, the principle of apportionment was extended to the cases of rents, annuities, dividends, and other periodical payments in the

nature of income reserved or made payable otherwise than by an instrument in writing, with the like remedies for the recovery of the proportionate payment. This Act does not apply to rent, annuities, and other payments in the nature of income which have accrued due before the happening of the event by reason of which it is proposed to apply the Act, and the Act therefore does not apply to rent payable in advance. But the Act applies not only as between two classes of receivers, such as tenant for life and remainderman, but also as between receiver and payer; so that where a tenancy is determined during, say, the middle of a quarter, rent is payable by the tenant down to the actual time of determination, unless the determination is due to the wrongful act or default of the landlord.

Apportionment of Contract. A contract is said to be apportionable when the acts required to be done under it are so distinct that, if one is performed without the others, the party performing it has the right of enforcing the contract *pro tanto* against the other party. Thus, if A enters into a contract to supply machinery to B for a certain price, and to keep it in order for a yearly payment, A becomes entitled to recover the price of the machinery as soon as he delivers it, without waiting for the performance of the rest of the contract. See DIVISIBLE CONTRACTS; ENTIRE; SEVER.

Apposal, the duty performed by the apposer, (q.v.).

Apposer, an officer of the Exchequer who examined the accounts of the sheriffs.

Appraisement. See COMMISSION.

Appraisers. See VALUATION AND APPRAISEMENT.

Apprentice. This is a person, whether an infant or an adult, or male or female, who binds himself to serve and learn for a definite time from a master, who on his side covenants to teach his trade or calling to the apprentice. Formerly there were, for instance, surgeons' apprentices, but now apprenticeship is customary only in the case of tradesmen or artificers. The contract of apprenticeship may be either oral or in writing if for a period not exceeding a year, but for any longer period it must be in writing. If, as is generally the case, the apprentice is an infant, he is entitled to avoid the contract when he comes of age, but if he wishes to do so he must act within a reasonable time. No action lies against an infant apprentice for breach of his apprenticeship agreement, and a parent therefore usually covenants for him; but the apprentice must execute the agreement.

Apprentices ad Legem, apprentices to the law. This, down to about the year 1455, was the term used to describe those who had been called to the Bar but who were not *servientes ad legem* (serjeants at law). About the year 1455 all who had been called to the Bar but who were not serjeants began to be described as "utter barristers," and subsequently they came to be known as barristers (q.v.). This distinction between barristers who were serjeants at law and those who were not continued down to our own time. See SERJEANT; see also KING'S COUNSEL.

Approbation des Loix. This is the popular title of the *Approbation des Loix, Coustume et Usages de l'Isle de Guernezey, differentes du Coustumier de Normandie, d'ancienneté observés en ladite Isle.*

It purports to set out the laws, usages, and customs of Guernsey as they existed in 1580, and as confirmed in 1581 by Queen Elizabeth sitting in Council. Whether this is or is not the case, the *Approbation* is the principal authority on the law of Guernsey. It deals with both civil and criminal law, and, as the full title indicates, it shows the points regarding which the law of Guernsey differed from that of Jersey. See CHANNEL ISLANDS; GRAND COUSTUMIER; PRECEPTE D'ASSIZE.

Appropriare communiam. Anciently this meant to enclose and appropriate to private use land which had been common.

Appropriate; Appropriation. In the primary sense of the word, to appropriate is to make a thing the property of a person. Thus, to appropriate a thing which is *publici juris* is to obtain a right to the exclusive enjoyment of it, so that the appropriator becomes the owner.

Where a person is entitled to goods or moneys which form part of a larger quantity and are not earmarked, and afterwards the goods or moneys to which he is entitled are separated from the rest and set apart for him, they are said to be appropriated. Thus, if A sell to B 1,000 bricks, to be selected and taken away by B from a certain stack, then, as soon as B has selected and taken away 1,000 bricks, they are appropriated to him, and the sale, which before was executory, is now complete.

When moneys or goods are appropriated (that is, set apart) for the purpose of securing the payment of a specific debt or class of debts, they are said to be specifically appropriated for that purpose. Thus, where A draws a bill of exchange on B and remits to

B a bill of lading, draft, or other document of title as security for the repayment of the bill, and B accepts the bill on that footing, the bill of lading is specifically appropriated to the payment of the bill of exchange. The consequence of such a specific appropriation is that the goods represented by the bill of lading are applicable exclusively to the payment of the bill of exchange, in whosoever hands the latter may be, and that when the bill has been satisfied, the goods represented by the bill of lading (or what remains of them after payment of the bill) revert to A, the original owner. Hence, if B becomes bankrupt before the goods are applied in payment of the bill, and a balance remains after payment of it, the balance belongs to A.

To appropriate also means to distribute. The property in goods or lands of a deceased person is in the executor or administrator, and it is his duty to appropriate them, that is, to distribute them among the persons entitled (legatees or next-of-kin, devisees or heir) according to their rights.

As to appropriation of payments, if A borrows from B a sum of £50 on the 1st January and another sum of £50 on the 1st July, and on the 1st December pays him £50, saying that it is in satisfaction of the debt incurred on the 1st July, he is said to appropriate the payment to that debt. The question whether a payment is appropriated by the debtor is important in many ways; thus, if A owes B two sums, one of which is barred by the Statute of Limitations, while the other is not, and A makes a payment to B without appropriating it (which is called a general payment), then B may appropriate it to the statute-barred debt, although he could not recover it by action. The general rule is that the debtor may appropriate the payment at the time; that if he fails to do so the creditor may do so; and that if they both fail to do so, the law will appropriate the payment to the earliest debt. Where a payment might be, but is not, appropriated, it is called an indefinite payment. As to appropriation generally, see CLAYTON'S CASE.

Appropriation of supplies is the mode by which parliament regulates the manner in which the public money voted in each session is to be applied to the various objects of expenditure (*e.g.* the army, navy, civil service, &c.), and the Appropriation Act is an annual Act passed for the purpose.

In ecclesiastical law, appropriation is where a benefice is perpetually annexed to a spiritual corporation, either aggregate or sole, as the patron of the living. In such a case, the cure of souls is generally given to a clerk who, from being in effect the deputy of the appropriator or patron, is called the vicar (*vicarius*): he is instituted and inducted in much the same way as a rector, but he has only a portion of the emoluments of the living—generally a part of the glebe and a particular share of the tithes. In some appropriated churches the officiating minister is a perpetual curate. See DISAPPROPRIATION; IMPROPRIATION; TITHES.

Appropriator, a spiritual corporation to which a benefice is annexed. See APPROPRIATE.

Approvement. This means, with regard to common, the inclosure of part of a common by the lord of the manor, sufficient being left for the commoners. This right of approvement can now be exercised only with the consent of the Ministry of Agriculture and Fisheries (Law of Commons Amendment Act, 1893). In the criminal law it meant becoming an approver (q.v.).

Approver. Anciently this meant one who, when indicted and arraigned for treason or felony, confessed, before pleading, the charge against him, took an oath to reveal all treasons and felonies within his knowledge, and accused his accomplices. No one could be an approver who was attainted or incapable of taking an oath or unable to wage battle. Approvement has long been obsolete; but a criminal who turns "King's evidence" (q.v.) is still known in Ireland as an approver—unless he is abusively described as an informer.

Aquage. Anciently this meant a toll paid to a man for the right of getting water through a watercourse across his land. See EWAGE.

Arbitramentum aequum tribuit cuique suum (*Noy., M.*, 248). (A just arbitrament awards to each one his right.) Used by Noy about 1630 of an arbitrator's award.

Arbitration. This means the determination of disputes by the decision of one or more persons, called arbitrators. Practically every question which might be determined by civil action may be referred to arbitration. The law on the subject has been codified by the Arbitration Act, 1889, which deals with (1) references by consent out of Court, and (2) references by order of the Court.

With regard to references by consent out of Court:—An agreement to refer a dispute to arbitration is called a submission, which by s. 27 of the Act is defined as meaning "a written agreement to refer present or future differences to arbitration, whether an arbitrator is named therein or not." No particular form is obligatory, and the agreement need

not be under seal, but, unless the matter in dispute does not exceed £5 (Stamp Act, 1891, sch. 1), the agreement must bear a sixpenny agreement stamp. A submission is irrevocable except by leave of the Court or a judge (s. 1), and if legal proceedings are instituted in contravention of the submission the defendant may, but only before delivering pleadings or taking any other step in the proceedings, apply to the Court to stay them (s. 4), while if either party refuses to go to arbitration the arbitration can proceed *ex parte*. The first schedule to the Act contains a number of provisions as to the manner in which an arbitration is to be conducted; and s. 2 of the Act provides that every submission, unless a contrary intention is expressed therein, shall be deemed to include those provisions.

As to references by order of the Court:—S. 13 of the Act provides that, subject to any rules of Court and to the right to have any particular case tried by a jury, the Court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee, whose report may be adopted wholly or in part by the Court or judge and, if so adopted, may be enforced as a judgment or order to the same effect. The report in this case is not conclusive. But by s. 14 it is provided that (*a*) if all parties agree, or (*b*) if such investigations are required as cannot, in the opinion of the Court, conveniently be made except by a referee or arbitrator, or (*c*) if the question in dispute is wholly or in part a matter of account, then the whole cause or matter, or any question or issue of fact arising therein, may be sent, not for a mere report but for trial before a special arbitrator or referee agreed on by the parties or before an official referee or officer of the Court.

A number of statutes incorporate this Act, while others, such as the Allotments and Small Holdings Act, 1908, 8 Edw. 7, c. 36, provide for arbitration in accordance with a special procedure set forth in each Act. See REFEREE; UMPIRE.

Arbitratione facta, De. A writ which anciently lay to stay an action the subject of which had been settled by arbitration.

Arbitrium est judicium (*Jenk.* 137). (The award of an arbitrator is the same thing as a judgment.)

Arbor dum crescit; lignum cum crescere nescit (2 *Bulst.* 82). (A tree while growing is called a tree, but it is called timber when it has become incapable of further growth.)

Archaionomia. See LAMBARD.

Archbishop, is the chief of all the clergy within his province (q.v.). He has two concurrent jurisdictions, one as ordinary or bishop within his own diocese, the other as superintendent throughout the whole province: by virtue of the latter he has the inspection of the bishops of that province as well as of the inferior clergy, or, as the law expresses it, the power to visit them. See VISIT. He confirms the election of the bishops and afterwards consecrates them; and, when so directed by the King's writ, he calls the bishop and clergy of his province to meet him in convocation. He is also superior ecclesiastical judge within his province (see ECCLESIASTICAL COURTS), and a spiritual lord of Parliament. See PARLIAMENT. There are two archbishops, namely, of Canterbury and York, of whom the former is the superior, being called the Primate of all England. See PRIMATE.

See also BISHOP; LAMBETH DEGREES.

Archdeacon, is a dignitary of the Church, having an ecclesiastical jurisdiction immediately subordinate to, but independent of, the bishop. A diocese is frequently divided into several archdeaconries. The archdeacon visits the clergy (see VISITATION), and has a Court for hearing ecclesiastical causes. See DIOCESAN COURTS.

Archdeaconry, the area over which an archdeacon has jurisdiction.

Archery. When the long-bow, which was the national weapon, was in process of being supplanted first by the cross-bow (q.v.) and then by the musket, statutes, such as the 33 Hen. 8, c. 9, and 4 & 5 P. & M. c. 2, were passed in order to promote the use of the long-bow.

Arches, Dean of the. This was the ancient judge of the Court of Arches (q.v.), who exercised what was known as the peculiar jurisdiction of the Archbishop of Canterbury, that is to say, jurisdiction over "peculiar" districts, which were exempt from the jurisdiction of the bishop in whose diocese they are situated. The Official Principal was the officer who exercised the metropolitan jurisdiction of the archbishop. The two offices gradually became blended together, and ultimately the Dean of the Arches ceased to be appointed; but the Official Principal continued to exist and to exercise both jurisdictions, and was popularly known as the Dean of the Arches. Between 1836 and 1850 nearly all the peculiar jurisdictions were abolished, so that practically only the metropolitan jurisdiction remains. By the Public Worship

, provision was made for the appointment of a barrister, in actual practice for ten years, as judge of the Court of Arches and *ex officio* Official Principal. This judge must be, and his office determines if he ceases to be, a member of the Church of England. See COURT OF ARCHES.

A rescriptis valet argumentum (*Co. Litt.* 11). (An argument from the rescripts is sound.) The maxim is applied, at the reference given above, to original writs in the register. These were the ancient writs, as to which see ACTION ON THE CASE.

Argent du Roi. KING'S SILVER (q.v.).

Argentum Dei (God's money). Anciently this meant earnest money (q.v.). To this day in Holland earnest money is known as *Goos penning* (God's penny). Compare *Denarius Dei* (q.v.).

Arguendo, in the course of his argument.

Argumentative. This word is used in two senses.

In the old common law pleading, a plea was said to be argumentative and was not allowed if a material fact was stated, not directly, but by inference only. Thus, to allege that E. B. was seised for life would be to deny by implication, but by implication only, that the reversion belonged to him in fee, and, therefore, to avoid argumentativeness, a direct denial that the reversion belonged to him was added.

In the more modern sense, an affidavit is said to be argumentative if it contains, not merely allegations of fact, but arguments as to the bearing of those facts on the matter in dispute such as should be left to be advanced when the matter comes before the tribunal. Such affidavits are prohibited by Ord. XXXVIII., r. 3.

Argumentum a communiter accidentibus in jure frequens est (*Gothofred ad D.*, 44, 2, 6). (An argument from the fact that such and such a thing commonly happens is frequent in the [civil] law.) This corresponds more or less to our own maxim, "*Ad ea quae frequentius accidunt jura adaptantur*" (q.v.).

Argumentum a divisione est fortissimum in jure (6 *Rep.* 60; *Wing*, 71). (The argument by division is the most effective known to the law.) Thus, where one claimed common *ratione commorant* and *resident* it was held, as there were only four kinds of commons—viz., common appendant, appurtenant, in gross, and by reason of vicinage—and as common *ratione commorant* and *resident* was none of the four, and as *argumentum a divisione est fortissimum in jure*, therefore the claim was untenable.

Argumentum a majori ad minus negative non valet; valet e converso (*Jenk.* 281). (You cannot argue in the negative from the greater to the less, but you can argue in the negative from the less to the greater.) The maxim was applied to a contention that the King could not recover single damages because he admittedly could not recover double damages.

Argumentum a simili is good in law (*Co. Litt.* 191). (An argument from a like case is good in law)—that is to say, a case on all fours with the case before the Court can be quoted as an authority. Compare *Nullum simile*, etc.

Argumentum ab auctoritate plurimum valet in lege (*Co. Litt.* 254). (An argument based on a decided case is of the greatest weight in the law.) Coke introduces the maxim by observing, "Here it appeareth that our booke cases are the best proofes what the law is."

Argumentum ab impossibili plurimum valet in lege (*Co. Litt.* 92). (An argument deduced from the fact that a thing is impossible is of much weight in the law.) Coke, in connection with this maxim, quotes the further maxim, "*Lex non cogit impossibilia*" (q.v.).

Argumentum ab inconvenienti plurimum valet in lege (*Co. Litt.* 66). (An argument based on inconvenience is of great weight in the law.) Coke, after quoting the maxim, goes on to say:—"*Non solum quod licet sed quod est convenions est considerandum. Nihil quod est inconveniens est licitum,*" that is to say, "We must consider not only whether a thing is lawful, but also whether it is convenient. Nothing which causes inconvenience can be sanctioned." Thus, if an instrument is capable of alternative interpretations, and it can be shown that the adoption of a particular interpretation will lead to great inconvenience, then that will tend to show that such interpretation is not in accordance with the true meaning of the instrument. But if the instrument is capable of only one interpretation, that interpretation must be adopted without regard to any inconvenience which may be caused by this being done.

Arles; Erles, ancient names of earnest money (q.v.).

Arm of the Sea. See FORESHORE.

Arma dare, to knight: used in Norman times.

Arma in armatos sumere jura sinunt (2 *Jus.* 574). (It is lawful to use arms against persons who are armed.) This maxim, which is from

the Roman law, cannot be accepted without qualification for the purposes of English law. It is, however, lawful to use arms if and in so far as the use of arms is necessary to prevent the commission of a forcible or atrocious crime, such as murder, robbery, or rape, or for the dispersal of dangerous rioters, or for the purpose of preventing the escape of a felon.

Arma libera, free arms, a lance and a sword given to a servant in Norman times when he was made a freeman.

Armiger, an esquire (q.v.).

Armistice, a temporary, but for the time being a total suspension of hostilities by agreement between the governments of the belligerents. It is to be distinguished from a truce arranged for some local purpose—such as the burial of men killed—between military commanders on either side.

Armorial Bearings. These, as known to the law, include any armorial bearing, crest or design, by whatever name called, and whether registered in the College of Heralds (q.v.) or not (Customs and Inland Revenue Act, 1869, s. 19), and an annual licence duty must be paid, of £2 2s. if they are displayed on a carriage (other than a licensed hackney carriage), and of £1 1s. if they are otherwise used (s. 19). But the duty is not enforced in the case of (1) devices used by shopkeepers as trade-marks; (2) devices used as arms by corporations or companies or the officials thereof; (3) devices used by members or officers of a club or society which itself is licensed to use them. The licence is one of the LOCAL TAXATION LICENCES (q.v.).

"If any person without the authority of His Majesty uses in connection with any business, trade, calling or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to lead to the belief that he is duly authorised to use the Royal Arms" he is liable on summary conviction to a penalty not exceeding £20 (Patents and Designs Act, 1907, s. 90 (2)); and the unauthorised use of the Royal Arms may be restrained by injunction (Trade Marks Act, 1905, s. 68).

Arms. This expression includes, for legal purposes, not only military weapons, but anything, such as clubs or stones, with which a hurt may be caused.

The carrying of arms in time of peace is prohibited by the statute 2 Edw. 3, c. 3; but the penalty is imprisonment during the King's pleasure and forfeiture of armour, so that the statute does not apply to modern conditions. As to the present law, see FIREARMS.

Army. See MUTINY ACT.

Army Brokerage Acts, The. The collective title given by the Regimental Exchange Act, 1875, s. 3, to the statutes of 1557 and 1809; mentioned under PUBLIC OFFICES, SALE OF.

Army Council. This body was created by letters patent, dated 6th February, 1904, to take over the administrative duties connected with the Army which before that date had been exercised by the Commander-in-Chief (q.v.), and the Secretary of State for War. It consists of the Secretary of State for War—who is empowered to specially reserve to himself any business which he pleases—a civil member (who is the Parliamentary Under Secretary of State), a finance member, and four military officers of high rank. The Army Council does all things connected with the Army which are not done by the Inspector-General of the Forces (q.v.).

Army Reserve. See RESERVE FORCES.

Arpen; Arpent, a French measure of land which was in use here for a considerable time after the Norman Conquest. It contained a hundred square perches and varied, with the length of the perch, from about an acre and a third to about five-sixths of the present statute acre.

Arraiers, officers who anciently equipped soldiers with arms and armour; referred to in the statute 12 Rich. 2., c. 6. They were concerned with the *arraiatio peditum,* or arraying of infantry soldiers, mentioned in a patent of 1307; the knights and other mounted men provided their own equipment.

Arraign; Arraignment. To arraign a prisoner is to call him to the bar of the Court to answer the matter charged against him in an indictment.

Arrangements between Debtors and Creditors. A man who is unable to pay his debts may arrange with his creditors, either privately or in the Bankruptcy Court, for discharge of his liabilities by partial payment. If he arranges privately, he does so under the Deeds of Arrangement Act, 1914, which amends and codifies the law on the subject. If, however, he has got into the Bankruptcy Court, it is for his creditors to consider whether he shall be adjudged a bankrupt or whether a scheme of arrangement shall be accepted (Bankruptcy Act, 1914, s. 13); and if he proposes a scheme to which the requisite majority of the creditors assent (*ib.*, s. 16 (2)), the Court may either approve or refuse to approve of the scheme (*ib.*, s. 16 (11)), except

in certain cases where the Court must refuse to approve (*ib.*, s. 16 (9), (10)). If it shows that approval was obtained by fraud, or if the scheme breaks down, the debtor may be adjudged bankrupt (*ib.*, s. 16 (16)).

Under the Railway Companies Act, 1867, ss. 6-22, when a railway company is unable to meet its engagements with its creditors, a scheme of arrangement may be effected through the Chancery Division, if the requisite assent is obtained from the creditors.

A compromise or arrangement between any company registered under the Companies Acts and its creditors or members may, if approved by the requisite majority of creditors or members, be sanctioned by whatever Court has authority to wind the company up, that is to say, as the case may be, the High Court, the Chancery Courts of the counties palatine of Lancaster and Durham, or the County Court (Companies (Consolidation) Act, 1908, ss. 120, 285, 131).

Array. This signifies ranking or setting forth in order. A challenge to the array, as applied to juries and as distinguished from a challenge to the polls, signifies an exception or objection against all the persons arrayed or empanelled on a jury on account of some partiality or default of the sheriff or his under-officer who arrayed the panel

Array, Commission of. From the end of the twelfth century until the reign of Elizabeth, writs (known from the time of Edward I. as commissions of array) were from time to time issued to authorise the persons to whom they were directed to "elect," that is, impress, men for military service. These commissions of array were eventually superseded by commissions of lieutenancy (q.v.). These writs were issued under the authority of the Assize of Arms (1181) and other ancient Acts for the defence of the realm. They purported to be issued in order to raise men for the defence of the country against invasion, and for that purpose their issue was legal; but they were really used in order to raise forces for wars in Scotland and in France, and their issue for the latter purpose was not legal.

Arrectatus. See ARRETTED.

Arrenatus. In the Rolls of Parliament, 21 Edw. 1, the word is used as meaning "accused."

Arrent; Arrentation. To arrent lands in a forest meant to grant a licence to enclose them with a hedge and ditch, upon payment of a yearly rent; and arrentation was the issue of such licences. See the Ordinance of the Forest, 34 Edw. 1.

Arrest. To arrest a person is to restrain him of his liberty by some lawful authority. Arrest is usually made by actual seizure of the defendant's person, but any touching, however slight, of the person is sufficient for this purpose. And arrest is not confined to corporal seizure: where the officer entered the room in which the defendant was, and locked the door, telling him at the same time that he arrested him, the Court held it to be a good arrest. And if the officer say, "I arrest you," and the party acquiesce, or afterwards go with him, this is a good arrest.

Arrest in civil proceedings is now rare; the principal instances are where a person is attached for contempt of Court (see ATTACHMENT) and the cases specified in the Debtors Act, 1869 (q.v.), ss. 4, 5, 6, and where a contributory is arrested under the Companies (Consolidation) Act, 1908, s. 176.

Formerly, arrest in civil proceedings was of two kinds—on mesne and on final process. At common law, arrest on mesne process was originally intended to compel the defendant to appear in an action, but it afterwards became the means of compelling him to give bail (q.v.). Arrest on mesne process in Chancery was to compel a defendant to put in an appearance or answer to a bill of complaint. Arrest on mesne process was abolished by the Judgments Act, 1838, in all cases except that of a defendant suspected of intending to abscond, and was modified in that case also by the Debtors Act, 1869 (q.v.). Arrest on final process was a mode of execution, that is, of enforcing a judgment: the writ used was called *a capias ad satisfaciendum* (q.v.). But now this remedy has been much restricted, and is available only in the cases mentioned in the Debtors Act, 1869 (q.v.).

In Admiralty actions *in rem*, a ship or cargo is arrested by nailing or fixing the original warrant on the mainmast, or (if there be only one mast) on the mast for a short time and afterwards substituting a copy for the original (R. S. C., Ord. IX., r. 12).

Any peace officer (that is to say, any justice, constable, sheriff or coroner) may arrest for felony, or for the attempt to commit a felony, or on reasonable suspicion of felony. A private person has the same right of arrest, except that, in order to justify arrest, he must prove that a felony has actually been committed. A peace officer may also arrest for breach of the peace committed in his view or a renewal of which he reasonably apprehends. For other offences, that is to say, for misdemeanours or

for offences triable summarily, there is no power of arrest without warrant, unless where the power is given by statute. In any case where a warrant is necessary, the warrant should be in the possession of the person effecting the arrest.

Arrest of Inquest. An obsolete pleading showing cause against the holding of an inquisition (q.v.).

Arrest of Judgment. In criminal cases the accused may at any time between conviction and sentence move in arrest of judgment (that is to say, move that judgment be not pronounced) because of some defect in the indictment which is more than a mere formal defect and which has not been amended or cured by verdict (see AID BY VERDICT). The motion was always made without merits and on purely technical grounds; and the Indictments Act, 1915, which codifies and simplifies the law as to indictments, now makes it difficult to succeed on any such motion.

The Court can, of its own motion, arrest judgment if of opinion that no offence in law is disclosed by the indictment. Arrest of judgment is no bar to a fresh indictment.

In connection with the question of arrest of judgment, particular attention should be directed to s. 5 (1) of the Indictments Act, 1915, the precise effect of which is not yet settled by authority and which makes it conceivable, though improbable, that, in some circumstances at least, an indictment may be amended even after verdict.

Under the old common law practice, where a defendant might have taken, but did not take, some objection of substance to the plaintiff's pleading by demurring to it, and a verdict was found for the plaintiff, the defendant might then take the objection by moving in arrest of judgment, and, if the objection was well founded, judgment would not be entered for the plaintiff. As a judgment on a verdict is, under the present practice, only entered by order of the judge or Court (see Ord. XXXVI., r. 39), this procedure is now inapplicable. See MOTION FOR JUDGMENT.

Arrestandis bonis ne dissipentur, De, a writ to prevent a man's goods being made away with by one who had seized them and who, in modern phraseology, was not a mark for damages. It authorised the sheriff to seize them and to hold them pending an order of the king's justices.

Arrestando ipsum qui pecuniam recepit, De, a writ which anciently lay for the arrest of one who had taken the king's prest-money and had then failed to go on military service. See PREST for a more drastic remedy.

Arresto facto super bonis mercatorum alienigenorum, De, a writ which anciently lay for a denizen (q.v.) to seize the goods of aliens within the kingdom by way of reprisal for the seizure of his goods in another country.

Arretted. To say of a man that he was arretted meant that he was accused: to say that a folly was arretted to a man meant that it was imputed to him. The Latin form was *arrectatus*.

Arrura, a day's ploughing. Tenants frequently held upon the service of doing a certain number of *arrurae* in each year for the lord.

Arsenic. The sale of arsenic is specially regulated by the Arsenic Act, 1851, of which ss. 1 and 2 contain restrictions practically identical with those contained in the Pharmacy Act, 1868, s. 17 (see POISONS, SALE OF), except that a sale to an unknown purchaser must take place in the actual presence of the person who introduces him and that no arsenic may be sold to a person under twenty-one. Arsenic must, before sale, be discoloured with soot or indigo, unless sold for a purpose for which discoloration would render it useless (s. 3); if sold without discoloration, not less than ten pounds may be sold (*ib.*), but nothing in the Act applies to sale in a medicine duly prescribed or to sale in the course of wholesale dealing (s. 5).

Arson. At common law it was felony, punishable with death, to burn the house of another wilfully and of malice aforethought, the offence being termed "arson"; while to burn one's own house and thereby to cause damage to other houses, was a misdemeanour.

The various possible kinds of incendiarism are now punishable under the Malicious Damage Act, 1861, which by various sections makes them felony, punishable by penal servitude for various terms. Under the Dockyard Protection Act, 1772, s. 1, any person setting fire to any of his Majesty's dockyards, arsenals or ships, or to any stores or materials kept therein is punishable with death: but, under the provisions of the Judgment of Death Act, 1823, the Court, if it think fit, may record sentence instead of pronouncing it: these offences against the Act of 1772 are also punishable with death upon conviction by court-martial of an offender triable by such Court (Naval Discipline Act, 1866, s. 34).

Arsura, the testing of money by fire, used in *Domesday* in the form *ad asuram*.

Art Unions. The Art Union Act, 1846,

associations—known as art unions—for the distribution by lot of works of art, or of sums of money to be expended in the purchase of works of art, shall be deemed legal provided that they shall have been incorporated by royal charter. But for this enactment, such associations would be illegal, inasmuch as they are clearly within the statutes prohibiting lotteries.

Arthel; Ardel. Under a custom existing in Wales, a person accused of, for instance, larceny, could "cast an ardel," that is to say, produce one to vouch for him; and the effect of this was to cause a discontinuance of the proceedings. The statute 26 Hen. 8, c. 6, s. 5, abolished the custom. Compare ASSACH.

Articled Clerk, is a clerk under articles (i.e. heads and particulars) of an agreement to serve a solicitor in consideration of being initiated into the routine and mystery of the profession. No one solicitor may have more than two articled clerks at any one time (Solicitors Act, 1843, s. 4), but a firm of, say, three partners may have as many as six such clerks among them, viz., two to each partner, provided each is bound separately to one of the partners only, and not generally to all. Where the clerk is (as usually happens) at the date of the articles under age, his parent or guardian is usually made a party to the articles as well as himself.

See SOLICITOR.

Articles are clauses of a document, and hence the word "articles" sometimes means the document itself: e.g. articles of agreement, articles of partnership, etc.

In criminal proceedings in the Ecclesiastical Courts, the first plea is called the articles, because it runs in the name of the judge, who "articles" and "objects" the facts charged against the defendant.

Articles of Association. See ASSOCIATION, MEMORANDUM OF.

Articles of Religion. See ARTICLES, THE THIRTY-NINE.

Articles of War. The King's Regulations (for the Navy), 729, define the Articles of War as "the printed sheets containing so much of the Navy Discipline Act as relates to the punishment of offences," and directs that they are to be displayed on each ship and to be read to the ship's company every quarter. The Act referred to in the definition is the Navy Discipline Act, 1866, as amended by subsequent legislation.

In the Army there are, strictly speaking, no Articles of War, the ordinances which formerly were known by that name being now replaced by so much of the Army Act as relates to the punishment of offences. That portion of that Act is popularly known, for Army purposes, as the Articles of War, and consists of ss. 4-44 inclusive and is (see King's Regulations for the Army, 461) to be read on parade at the head of every unit once in every three months.

Articles of the Eyre. In the system of the eyre, these articles, as Mr. Bolland puts it, "formed, in effect, a long catechism demanding information on every sort of matter where a possible answer might afford ground for extracting an amercement from somebody, for forcing somebody to pay a fine to the King to avoid worse things." This "catechism" had to be answered by the "dozen" or twelve men of each hundred, who had to disclose to the justices in eyre "every breach of the law, both civil and criminal—that had happened since the last eyre," to again quote Mr. Bolland. See CAPITULA ITINERIS; PLEAS OF THE CROWN.

Articles of the Peace. A person is said to exhibit articles of the peace when he complains on oath to the Lord Chancellor, the High Court, an Assize Court, Quarter Sessions or a Court of Summary Jurisdiction, that he fears, with reasonable cause, that another person will do or cause to be done bodily harm to him or to his wife or child or burn his house; and the Court, if satisfied that there are reasonable grounds of fear, is bound to require sureties for the peace. Down to 1879, the law was that the defendant could not give evidence or call witnesses to answer or controvert the statements made by the complainant, who could, however, be cross-examined; and this is still the law where the complaint is made otherwise than to a Court of summary jurisdiction. Now, however, under the Summary Jurisdiction Act, 1879, s. 25, when the complaint is made to a Court of summary jurisdiction, the same procedure is followed as on any other complaint, and the complainant and defendant and witnesses may be called and examined and cross-examined in the ordinary way; and s. 26 of the same Act provides that, if the defendant be ordered to give security to keep the peace and fails so to do, he may be imprisoned for not more than six months by a petty sessional Court or than fourteen days by any other Court of summary jurisdiction.

Before 1879, there was no limit to the period of imprisonment which could be ordered by any court in default of security being given, but it was unusual to order any imprisonment exceeding one year; and the law is still the

same except as regards a Court of summary jurisdiction.

The complaint should usually be made locally. Thus, in 1759, the Court of King's Bench refused to entertain a complaint from Cornwall, and said that the complainant should go to a local justice. And the tendency now is to hear such complaints before a Court of summary jurisdiction. Since 1879, the practice under which a justice could send the complaint on to Quarter Sessions has become obsolete, and no complaint has been heard since that date before the High Court or a judge of Assize. It was anciently said that only the superior Courts could require a peer or peeress to give security: but this would not appear to be now good law.

This jurisdiction to bind to the peace on complaint is to be distinguished from the jurisdiction to require sureties for good behaviour (q.v.) and from the jurisdiction of Courts and justices to bind to the peace on their own motion or as part of the punishment authorised by various statutes, as to which see SURETIES OF THE PEACE.

Articles, The Thirty-nine. The Thirty-nine Articles of Religion were agreed on by Convocation in 1562 and were promulgated by authority of Queen Elizabeth. They were ratified by Convocation in 1571, in which year s. 1 (now repealed) of the statute 13 Eliz. c. 12, required that all ecclesiastical persons should subscribe to them, while s. 2 (still in force) of the same Act enacted that ecclesiastics maintaining doctrines in contravention of them should be deprived.

Subscription to the articles is still obligatory—under the Clerical Subscription Act, 1865, on the clergy; under Canon 127 of 1603, on chancellors, commissaries and officials of the Ecclesiastical Courts; and, under the statute 14 Car. 2, c. 4, s. 13, on "any governor or head of the colleges of Westminster, Winchester, and Eton."

Articuli ad Novas Narrationes, a treatise on the pleadings given in the *Novae Narrationes* (q.v.), to which it is generally appended. It probably dates from the first part of the fifteenth century.

Articuli cleri, the name of an ancient statute 9 Edw. 2, st. 1, relating to the liberties and franchises of the clergy. Lord Coke applied the name to the petitions presented to the Star Chamber by Archbishop Bancroft in 1605.

Articuli Inquisitione super statutum Winton. (Articles of Enquiry upon the Statute of Winchester). An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 245), s. v. *Statutes of Uncertain Date*, and in the *Statutes at Large* as 34 Edw. 1. See WINCHESTER, STATUTE OF.

Articuli super Chartas, the title of the statute 28 Edw. 1, confirming Magna Charta and the *Charta de Foresta*, without the saving clauses which were contained in the *Confirmatio Chartarum*, 25 Edw. 1.

Artificial Person. This means a corporation, company, or other body of men which, for certain purposes, is regarded by the law as being a natural person.

A rubro ad nigrum, literally, from the red to the black. Statutes were written or printed in black, but the titles were in red; and to argue *a rubro ad nigrum* was to deduce the meaning of the statute from the title.

Ascension Day, the Thursday next following the fifth Sunday after Easter (q.v.). Also known as Holy Thursday. See FAST DAYS; FEASTS.

Ash Wednesday, the first day of Lent (q.v.).

Ashbourne Act, the popular title of the Purchase of Land (Ireland) Act, 1885.

Asportation; Asportavit. In the law of larceny, asportation was the "carrying away," without which the common law offence of larceny was not committed. *Asportavit* means "did carry away." Before 1733 (see FRENCH) it was necessary that the indictment for larceny should contain the averment that the prisoner "*cepit et asportavit.*" See CEPIT; TAKE AND CARRY AWAY; LARCENY.

Assach; Assath, a Welsh custom under which in certain cases the accused could clear himself by the oath of three hundred men: abolished by the statute 1 Hen. 5, c. 6. Compare ARTHEL.

Assart. This, in the ancient forest laws, meant to stub up trees and bushes in a forest (q.v.) so that they could not grow again, thus making what had been covert for the deer into land fit for use as arable or pasture land. The act of doing this was known as an assart: and land which had been assarted was called assart. A man could, by a writ of *ad quod damnum*, sue out a licence to assart; and if the licence was granted, an annual rent, called an assart rent, was usually reserved. But if a tenant of forest land assarted without licence, the land assarted reverted to the king until it had been redeemed by a fine.

Assart Land. At Rotherfield, in Sussex, assart means copyhold which ordinarily descends to the eldest son, or, in default of sons, to the eldest daughter. But if a tenant be admitted first to bond land (q.v.) and after-

wards to assart land, then the youngest son, or, failing a son, the youngest daughter, takes the assart land as well as the bond land. If, on the other hand, the tenant be admitted first to assart land and afterwards to bond land, then the eldest son or, failing a son, the eldest daughter, takes all the lands.

Assault. Strictly speaking, an assault, as regards civil proceedings, is an unsuccessful attempt to do harm to the person of another, as by menacing with a stick a person who is within reach of it, although no blow be struck. If a blow is struck, the act is a battery; but in legal proceedings for an alleged battery, in order that, if the plaintiff or prosecutor failed to prove the battery, he might still prove the assault, the act complained of would be described as an assault and battery; and hence in popular language the term "assault" has come to be treated as synonymous with battery. An assault is a tort (q.v.), giving rise to a right of action for damages.

In the criminal law, an assault is either a threat, made otherwise than by words, of using force to another, accompanied by a real or apparent ability to carry out the threat at once, or an attempt to use such force. If any force be used, the assault at once becomes a battery.

The more serious forms of assault are indictable offences under the Offences against the Person Act, 1861, and are punishable with various terms of imprisonment or penal servitude. Courts of summary jurisdiction can deal with less serious cases—known as common assaults—under ss. 42, 43, of that Act, or, if they relate to children under sixteen, under s. 12 of the Children Act, 1908; but offences under the last-mentioned section are also triable on indictment.

Under the Summary Jurisdiction (Married Women) Act, 1895, s. 4, when a husband has been convicted summarily under s. 43 of the Act of 1861 of an aggravated assault on his wife, or shall have been sentenced on indictment for assault to a fine exceeding £5 or to imprisonment exceeding two months, the wife may be granted a separation order either by the Court before whom he was convicted or on application to a Court of summary jurisdiction.

Assaults on peace officers can be dealt with summarily under s. 38 of the Act of 1861, or under the Prevention of Crime Act, 1871, s. 12.

Consent is no defence in criminal proceedings where the act charged is or tends to a breach of the peace or is dangerous; and consequently there can be no consent to a prize-fight. See CHASTISEMENT.

Assay. This anciently meant the testing of the quality of bread, wine, beer, etc., and the accuracy of weights and measures (see TENTATES PANIS); but that use of the word is now obsolete. It now means the testing of gold and silver plate and of the coinage in order to ascertain whether they are up to the standard specified by law. See COMBUSTIO; PYX.

Assayer. (I.) "An officer of the Mint appointed by the statute 2 Hen. 6, c. 12" (*Termes de la Ley*) to assay silver.

(II.) An officer of the king's household who tasted all food before it was served to the king: see Household Ord. Edw. 2, pars. 26, 37, 48, 49, 50.

Assembly, Unlawful. This means the common law misdemeanour consisting of an assembly of three or more persons either with intent (formed whether before or after they assembled) to commit by open force a crime (which, however, the assembly neither commits nor makes a motion towards committing) or else with intent to carry out any common purpose, whether lawful or unlawful, in such a manner as to give just ground to apprehend a breach of the peace. The distinction between an unlawful assembly and a rout or a riot will appear from a reference to the definitions of the two latter terms.

Assensio mentium. This means the mutual consent which is necessary for the purpose of a valid contract.

Assent, Royal. See ACT OF PARLIAMENT. The royal assent has not been withheld since the year 1707.

Assent of Executor. The title of a legatee or devisee is not complete until the executor has assented to the legacy or devise. The assent may be express or implied; almost any language or conduct acknowledging the right of the legatee or devisee, or from which it appears that there is nothing to prevent the legatee or devisee from having his legacy or devise, amounts to an assent.

After the assent, a legatee's title to a legacy is complete, and if the legacy is specific he may bring an action to recover the property bequeathed; but in the case of pecuniary legacies, his only remedy is an action for the administration of the testator's estate. If assent be unreasonably withheld, the Chancery Division will compel the executor to give his assent.

With regard to a devise, if, after the expiration of one year from the death of the testator, his executors have failed to convey

the land to a devisee, then the Court may compel the executors to convey (Land Transfer Act, 1897, s. 3 (2)).

Assessed Taxes. This expression strictly means taxes, such as the land tax, the inhabited house duty, and property or income tax, the amount or rate of which is assessed or fixed in each case; but it is also used to mean the taxes levied in respect of male servants, carriages, and armorial bearings. See EXCISE; LOCAL TAXATION LICENCES.

Assessment; Assess. To assess damages, or the value of property or some other unascertained sum, is to fix its amount. Thus, where judgment by default is obtained in an action for detention of goods or pecuniary damages, the value of the goods or the amount of the damages must be ascertained before the judgment can be executed. Assessment is effected by a writ of inquiry (see INQUIRY, WRIT OF), under Ord. XIII., r. 5, or under Ord. XXVII., r. 4, or by reference to a master or an official referee under Ord. XXXVI., r. 57.

Rates and taxes in respect of land and houses are calculated with reference to the estimated value of the property, which is arrived at by a process called assessment. For the purpose of levying poor rates and other local taxes, the guardians of every union or parish appoint from among themselves an assessment committee, who revise the valuation lists of the rateable hereditaments in each parish prepared by the overseers (see the Union Assessment Acts, 1862-1880). In London the valuation so arrived at is also made use of for the purposes of the inhabited house duty and the property or income tax in respect of land, &c. (Valuation (Metropolis) Act, 1869). In other places the mode of assessment for these taxes depends on the Acts relating to them. See INCOME TAX; INHABITED HOUSE DUTY.

Assessment for the purposes of a covenant by a tenant to pay "all taxes, rates and assessments," means periodical payments of a nature similar to that of rates and taxes and does not include, for instance, an exceptional burden imposed by a local authority in respect of permanent improvement to the property; nor does it mean tithe rentcharge.

Assessor. This is a person called in to assist a Court in trying a question requiring technical or scientific knowledge. In Admiralty business it is the practice of the High Court and the Court of Appeal (following the practice of the Court of Admiralty) to call in assessors in cases involving questions of navigation or seamanship: they are called "nautical assessors," and are always Brethren of the Trinity House. Under the Judicature Act, 1873, s. 56 and Ord. XXXVI., rr. 7 and 43, and Ord. LXVIII., r. 1, the High Court or the Court of Appeal may call in the aid of one or more assessors in any action or matter; and by the Appellate Jurisdiction Act, 1876, provision is made for the appointment and attendance of the archbishops and bishops of the Church of England as assessors of the Judicial Committee of the Privy Council in ecclesiastical appeals. There are other enactments by which the employment of assessors is authorised in various Courts. Assessors are also employed in various inquiries of a judicial character, e.g. in Courts of Survey and investigations by Wreck Commissioners under the Merchant Shipping Act, 1894, ss. 484, 466 (3), (4).

An assessor differs from a referee (q.v.) in having no voice or power in deciding questions, his duties being confined to assisting the deliberations of the Court.

Assets. This means property available for the payment of the debts of a person or corporation. The term is sometimes applied to the property of a living person, e.g. a bankrupt or a married woman whose property has been acquired by her husband, and to the extent of which he is liable for her debts or liabilities contracted before marriage. It is, however, more often applied to the property of a deceased person, or of a partnership or company which has ceased to carry on business and is being wound up.

The assets of a deceased person are of various kinds, according as they consist of real or personal estate belonging absolutely to the deceased, or of property over which he had merely a power of appointment. Real assets are the lands, or other real property of the deceased, which are liable for payment of his debts, whether he has devised or charged them for that purpose or not (see the Administration of Estates Acts, 1833 and 1869). The distinction between the various classes of assets is of importance with reference to the order of their administration where the residuary estate is insufficient for payment of all the debts. Another division of assets is into legal and equitable. Legal assets comprise everything which an executor takes *virtute officii*, and with which he would have been charged in an action at law by a creditor, while equitable assets are such as could only be reached by the creditor in a Court of equity. Thus, personal estate, including leaseholds, is legal assets; and so also is real estate since the Land Transfer Act, 1897, while equitable interests in or trusts of chattels, etc., are

equitable assets. The distinction was of importance with reference to the estates of persons who died before the 1st January, 1870, because, in the event of such a person leaving an insolvent estate, his debts were payable out of the legal assets in a different order from equitable assets. In the case of any person dying on or after the 1st January, 1870, his debts, whether by specialty or simple contract, are paid *pari passu* out of the assets without priority one over another, and there is therefore no distinction between legal and equitable assets in such cases (Administration of Estates Act, 1869).

The order in which the assets of a deceased person are applied in paying his debts, so as to exhaust one class of assets before coming on another, and so as to pay one class of debts in preference to another if the assets are not sufficient for the payment of all, is called the order of administration. Thus, if a testator dies leaving as residuary personal estate sufficient to pay all his debts, they are paid out of that residue, so as to leave the legacies and real estate untouched. If the residue be not sufficient, his real estate devised for payment of debts will be taken before his real estate descending to his heir, and so on. If his whole property be not sufficient for the payment of all his debts, it will be applied, first, in payment of his Crown debts in full, then the residue in or towards payment of his judgment debts, and the ultimate residue, if any, in paying a proportion of his other debts.

The following is the order in which the various classes of assets are taken or exhausted in succession:—(1) Personal estate not specifically bequeathed; (2) real estate devised or ordered to be sold for payment of debts; (3) real estate descended; (4) real estate charged with payment of debts; (5) general pecuniary legacies; (6) land comprised in a residuary devise, real estate specifically devised, and personal estate specifically bequeathed; (7) property over which the testator had a general power of appointment which he had exercised.

And the following is the order of administration of assets as regards debts:—(1) Crown debts; (2) debts to which priority is given by statute; (3) judgments against deceased, duly registered in the Land Registry; (4) judgments against personal representatives; (5) recognisances and statutes (see *Williams on Executors* (11th ed.), p. 779); (6) special and simple contract debts, and unregistered judgments against deceased; (7) voluntary bonds and covenants.

A judgment has no priority against an executor, administrator, or heir, unless a writ, execution, or order for the purpose of enforcing it is registered in the Land Registry (Land Charges Act, 1900, s. 2 (1)); and, therefore, an executor who pays contract debts in priority to an unregistered judgment incurs no liability to the judgment creditor. Judgments obtained against the personal representatives of a deceased debtor do not require registration, and are paid according to their priority in point of time.

In bankruptcy, and in the winding up of companies, all debts are payable *pari passu*, except that, in bankruptcy, certain debts in respect of rates and taxes and clerks' and servants' wages and salaries, and for compensation under the Workmen's Compensation Act, 1906, and for contributions under the National Insurance Act, 1911, and debts due by the bankrupt as an officer of a friendly society or trustee savings bank, are payable, *pari passu* amongst themselves, in priority to all other debts (Bankruptcy Act, 1914, s. 33); and except that in the winding up of a company, practically the same debts are preferred as are preferred in bankruptcy (Companies (Consolidation) Act, 1908, s. 209; National Insurance Act, 1911, s. 110).

Assets by descent are lands which descend to an heir charged with the debts or obligations of his ancestor. The term was originally used in the law of warranty (q.v.) to signify land which descended to an heir of equal value to land as to which his ancestor had entered into a warranty; thus, if A was heir to his mother, subject to his father's estate by the curtesy, and the father aliened the land with warranty and died, this warranty did not bar A's title to the land without assets in fee simple, that is, unless land in fee simple of equal value descended to him from his father. The term "assets by descent" was afterwards applied where a man died leaving debts by specialty in which his heirs were bound, in which case his heir was liable to pay the debts, so far as he had assets by descent, that is, to the value of the land which descended to him. Now that all the land left by a deceased person is liable for his debts, the term "assets by descent" has been supplanted by "real assets." See ASSETS; ALIENATION.

Assign; Assignment. "Assign," like "grant" (q.v.) is a general word signifying a transfer of property: thus, we speak indifferently of granting or assigning a reversion in

land. An assignment is the act of assigning, or the instrument by which it is done.

In a conveyance to "A, his heirs and assigns," or "A, his executors, administrators, and assigns," etc., the word "assigns" is in reality mere surplusage, because the estate or interest passes without it (see WORDS OF LIMITATION). In a covenant by "A, his heirs and assigns," the word "assigns" includes all those who take either immediately or remotely from or under A, whether by conveyance, devise, descent or other act of law, e.g. as assignee from A's heir, or as heir to A's assignee, and so on (see COVENANT); and whether they take the fee simple, or merely a limited interest, e.g. by lease.

In its more special sense, to assign is to transfer personal estate, or chattels real, or certain rights in real or personal estate. The term is especially applied to leases, terms of years, estates for life in land or personal property, and to choses in action, and incorporeal chattels. The word "assign" is the proper technical operative word, but any expression showing an intention to make a complete transfer will constitute an assignment. An assignment by way of sale is an absolute assignment for money: an assignment by way of mortgage is one made as security for a debt or the like– e.g. a bill of sale (q.v.).

Assignments of leases and terms of years must be by deed (Statute of Frauds, s. 4; Real Property Act, 1845, s. 3); assignments of choses in action and incorporeal personal property do not, as a rule, require to be by deed. In the case of policies of life and marine insurance, notice of the assignment must be given to the insurance company; in the case of patents or designs, the assignment, whether it be of the patent, etc., or merely of an interest therein, may be registered, and the person registered as owner of the patent, etc., has, subject to any rights appearing from the register to be vested in any other person, absolute power to deal with the patent, etc. (Patents and Designs Act, 1907, s. 71). The effect of s. 36, and Sch. 2 of the Copyright Act, 1911, is to abolish the registration of copyright. See ASSIGNMENT OF CHOSES IN ACTION.

Assignatus utitur jure auctoris (*Halk. Max.* 14). (An assignee is clothed with the right of his principal)—that is to say, acquires such right as the principal had, provided, of course, that such right was capable of assignment. But it is to be observed the assignee acquires the liabilities as well as the rights of his principal with regard to the subject-matter of the assignment. Compare QUI IN JUS, ETC.

Assignee (I.) is a person to whom an assignment is made, and the term is therefore usually applied to personal property: it is, however, sometimes applied to realty; thus, we speak of the assignee of a reversion. See ASSIGNMENT; ASSIGN.

(II.) In the old bankruptcy law, assignees filled a place similar to that now occupied by trustees (q.v.). By the statute 6 Geo. 4, c. 16, the estates of bankrupts were administered by persons chosen by the creditors, and to whom the bankrupt's property was assigned by the commissioners for that purpose; they were, hence, usually called assignees, or creditors' assignees. By the statute 1 & 2 Will. 4, c. 56, official assignees were introduced: they were permanent officials who, before their appointment, must have been engaged in commerce, etc., and one of them acted in each bankruptcy jointly with the creditors' assignees Assignees have no place in the present law of bankruptcy.

Assignment of Action or Matter. Under R. S. C. Ord. IX., r. 5, every action or matter in the Chancery Division is assigned by ballot to one of the judges of that division. But those judges have been divided into pairs, and to each pair chambers have been attached. And by Ord. IXA., each judge of each pair has full jurisdiction over every cause or matter which has been assigned to the other judge of the pair.

Assignment of Breach. See BREACH.

Assignment of Choses in Action. Formerly choses in action were not assignable at law except in a few cases (e.g. bills of exchange); but choses in action arising from contract (such as debts) were assignable in equity. It was, however, necessary for the assignee to give notice of the assignment to the debtor, trustee or stakeholder, in order to prevent him from paying the money to the original creditor (the assignor) or some subsequent assignee. Thus if A owed B a debt and B assigned it to C, the assignment was not complete as between C and A until notice of it had been given to A; and C took the debt subject to any prior equities (e.g. an agreement between A and B by which the debt was affected). Such assignments of choses in action were called equitable assignments. Now, by the Judicature Act, 1873, s. 25 (6), an absolute assignment in writing of a legal chose in action is effectual at law as well as in equity, provided notice in writing is given to the debtor, trustee, etc. See CHOSE.

. In ordinary cases, before a widow can take possession of any of her husband's land as tenant in dower (q.v.), her part must be assigned to her, either by agreement between her and the heir, or by the sheriff in execution of a judgment obtained by her.

Assignment of Errors. See ERROR.

Assignment of Waste. Common of estovers and turbary is sometimes limited to those parts of the waste (q.v.) which are assigned, that is, pointed out by the owner from time to time for the purpose. See VIEW AND DELIVERY.

Assisa cadera. At the time of Bracton this meant a non-suit (q.v.).

Assisa cadit in perambulationem. The jury declaring their ignorance of the boundaries in a question of disputed boundaries, the judge would order a perambulation, with a view to ascertain the boundary; hence this phrase.

Assisa continuanda, De, a writ mentioned by Bracton. It was addressed to the judge of assize for the continuation of a cause, when material facts could not be proved unless the cause were, in modern phraseology, adjourned.

Assisa de Ponderibus et Mensuris. (The Assize of Weights and Measures). An enactment printed under these titles in the *Statutes of the Realm* (Vol. I., at p. 204), under *Statutes of Uncertain Date*, and in the *Statutes at Large* as 31 Edw. I. It sets out the various weights and measures which were to be used. It provides that "the English penny, which is called the sterling, round without clipping, shall weigh thirty-two grains of wheat dry in the midst of the ear; twenty pence make an ounce; twelve ounces make a pound; and eight pounds make a gallon of wine." And it then sets out a very large number of other weights and measures, such as "a diker of gloves consisteth of ten pairs." See COMPOSITIONE, ETC.

Assisa de utrum. This writ, which was called also *assisa jurum utrum*, lay for a parson against a layman, or for a layman against a parson, for lands or tenements, as to which it was doubtful whether they were lay-fees or free-alms. It was abolished by the Real Property Limitation Act, 1833, s. 36. It was practically obsolete even when the *Termes de la Ley* (q.v.) was written.

Assisa panis et cerevisiae. This was the power of assising (at the time the judges on circuit assised) the weight of bread and the measures of beer. The statute 51 Hen. 3, for fixing the price of bread and ale, was so called (see the *Statutes of the Realm*, Vol. I., p. 200).

Assisa proroganda, De, an ancient writ, addressed to the judges of assize, for the stay of proceedings on the ground that a party to them was on the king's business.

Assisa vertitur in juratam. An assise was taken either "*in modum assisae*" or "*in modum juratae*," in which latter case it was said to fall into a jury (*cadere in juratam*). The difference between the two forms of assise appears to have been this:—(1) In nature—the very matter alleged by the plaintiff as his ground of claim was traversed in the *assisa*, while in the *jurata* some fresh point was stated which went to destroy that ground of claim; and (2) in consequence—the jury could not be attainted for false verdict in the *jurata*, whereas in the *assisa* they might be attainted, or, to put it in another way, the *assisa* could not, while the *jurata* could, return a general verdict. The *jurata* developed out of the *assisa*, between which and the modern jury it was the connecting link.

Assise or **Assize** anciently signified a legislative enactment. Some old statutes and ordinances are still so called, e.g., the Assise of Bread, the Assise of Clarendon, the Assise of the Forest, etc.

An assise passed in the reign of Henry II. provided for the trial of questions of seisin and title to land by a recognition or enquiry of sixteen men sworn to speak the truth (see ASSISE, GRAND); hence the proceedings, and the jurors themselves, became known as the assises. Some assises were called from the objects for which they were brought (such as the assise of common of pasture, to recover seisin of a common of pasture), but more often from the occasions which gave rise to them, e.g., the assises of novel disseisin, mort d'ancestor, etc.: see those titles.

Magna Charta provided that assises of novel disseisin and mort d'ancestor should be taken only in the shires where the land lay, and for this purpose justices were sent into the country once a year; hence they were called justices of assize. Afterwards, the Statute of Nisi Prius (13 Edw. 1, c. 30) enacted that the justices of assize should try the issues in ordinary actions in the counties in which they arose and return the verdict to the Court at Westminster. Hence, trials of civil actions before judges on circuit are said to take place at the assizes (see CIRCUIT; NISI PRIUS), where also are held trials under commissions of "oyer and terminer" and "gaol delivery" (q.v.). The assizes, therefore, are for criminal

as well as civil business. The judges also sit under a commission of the peace. See JUSTICES OF THE PEACE. The jurisdiction of the Courts created by commissions of assize, of oyer and terminer, and of gaol delivery, is now vested in the judges of assize. The judges of assize are appointed by special commission from the Crown, and are hence also called commissioners of assize; they must be selected from the judges of the High Court and the Court of Appeal, or from the King's counsel.

All England (including Wales), except Middlesex, is divided into seven circuits (q.v.) for the purposes of assizes. Assizes are held four times a year, there being the winter, Easter, summer, and autumn assizes. At the winter and summer assizes both civil and criminal business is taken on all circuits. Assizes at which there are no prisoners for trial are known as "maiden assizes."

On the Easter circuit, criminal business only is taken at Leeds, but both civil and criminal business is taken at Manchester and Liverpool. On the autumn circuit, both civil and criminal business is taken at Swansea, Leeds, Liverpool, Manchester, and Birmingham; but only criminal business is taken elsewhere.

The effect of the Assizes and Quarter Sessions Act, 1908, is that, where up to five days before the commencement of the assizes or quarter sessions there is no case requiring a jury to be disposed of thereat, then the assizes or quarter sessions need not be held unless other business has to be transacted.

See CENTRAL CRIMINAL COURT.

Assise, Grand. During the first hundred years succeeding the Norman Conquest, when a writ of right (q.v.) was issued against a feudal tenant, he had to defend his right to the land in question by battle in the Court of his lord. The fight might be between paid fighters or champions (q.v.), who thus were the predecessors first of the serjeant and then of the modern barrister. In the reign of Henry II. the tenant was given the right to "put himself on the assise," which meant that a writ of peace, otherwise known as the writ *de magna assisa eligenda*, was issued to the sheriff, whose duty it was thereupon to stay all proceedings in the Court of the lord and to constitute the Grand Assise by nominating four knights, who in their turn elected twelve other knights, the sixteen so chosen being called precognitors. The precognitors had to find whether the tenant or the claimant who impugned the tenant's title had the greater right to the land, and their verdict was returned either to the justices in eyre (q.v.) or to the King's Court at Westminster. The Grand Assise gradually fell into disuse; but it was abolished only by force of the Real Property Limitation Act, 1833, s. 36, which enacted that no writ of right should be issued after 31st December, 1834; and in 1835, and again in 1838, the case of *Davies* v. *Lowndes* (in which the writ had been issued before 1835) was tried in the Court of Common Pleas before a Grand Assise and the Chief Justice of the Common Pleas, the Grand Assise consisting of "four knights, girt with their swords, and the other twelve recognitors.' See 1 *Bing.* (*N. C.*) 599.

Assise of Arms, an ordinance passed in 1181 by Henry II., whereby he revived the ancient *fyrd* or national militia.

Assise of bread. See ASSISA PANIS.

Assise of Darrein Presentment, or last presentation, was a real action which lay where a man (or his ancestor under whom he claimed) had presented a clerk to a benefice, who was instituted, and afterwards, upon the next avoidance, a stranger presented a clerk, and thereby disturbed the real patron. It was abolished by the Real Property Limitation Act, 1833, s. 36, having been previously superseded in practice by the action of *quare impedit* (q.v.).

Assise of Mort d'Ancestor. This was a real action which lay to recover land of which a person had been deprived on the death of his ancestor by the abatement or intrusion of a stranger. See ABATEMENT. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Assise of Novel Disseisin. This was a real action which lay to recover land of which a person had been recently disseised. It was abolished by the Real Property Limitation Act, 1863, s. 36. It was called *assisa novae disseisinae* because the judges on circuit tried only questions of disseisin which were new, that is, which had arisen since the last eyre (q.v.). See DISSEISIN; OCCUPANT.

Assise of Nuisance, a writ which anciently lay against a man to redress or remove a nuisance which he had created to the freehold of another, whether the latter held for life, in tail, or in fee simple.

Assise of the Forest, an ordinance or statute relating to the king's forest.

Assise, Petty. This was a proceeding before justices in eyre (q.v.) to obtain a remedy for loss of seisin or possession. There were various petty assises, there being the assises of darrein presentment, of mort d'ancestor, and of novel disseisin, and others.

Assise Rents are the established rents of the

holders of a manor,
because they are
SISUS.

Assises de Jerusalem, a code compiled for the government of the city of Jerusalem after its conquest by the Crusaders, and subsequently adapted for use in the kingdom of Cyprus.

Assistance, Writ of. This writ was originally used by the Court of Chancery to enforce an order for the possession of land; but its use for that purpose is now obsolete, a writ of possession issued under R. S. C., Ord. XLVII., r. 2, being now substituted; and the writ of assistance is now issued only under R. S. C., Ord. LXXII., r. 2, for the purpose of putting a receiver or other person into possession of specific chattels, such as securities or documents, when the circumstances are such that the procedure specifically provided by the other rules of Court would be futile.

Assistant Judge of Middlesex Sessions. The Middlesex Sessions Act, 1844, s. 8, provided for the appointment by the Home Secretary of assistant and deputy-assistant judges of Middlesex Sessions (see MIDDLESEX), both of whom were paid. The great diminution of the size of the county of Middlesex which was caused by the creation of the County of London in 1888, made it unnecessary to have paid judges for the Middlesex Sessions: and the effect of the Local Government Act, 1888, ss. 42 (ii.), 126, was to repeal s. 8 of the Act of 1844 as from the date (which in fact was 1896) upon which the last of the judges appointed under the Act of 1844 should cease to hold office.

Assisus, land let for a fixed rent. The *terra assisa* of a lord was what he had let to tenants, as distinguished from the *terra dominica*, or land which he kept in his own hands. See ASSISE; RENTS.

Assizes. See ASSISE; ASSIZE.

Assizes Relief Act, 1890, is an Act under which, when any person has been committed for trial, or has been bailed when charged with an indictable offence which is triable at Quarter Sessions, the persons bound over to prosecute and give evidence shall be bound over to appear at the next practicable Quarter Sessions, and the accused person shall not be tried at any intervening Assizes unless the High Court shall specially so direct.

Associates. These were officers of the common law Courts, who were appointed by and held office at the pleasure of the Chief Justice or Chief Baron of each Court, and who were paid by fees down to 1852. By the Common Law Courts Act, 1852, their tenure of office was made to be during good behaviour. Salaries were substituted for fees, and provision was made for pensions; but the appointment was still left in the hands of the chief judges. By the Supreme Court of Judicature (Officers) Act, 1879, s. 8, the then existing associates of the Queen's Bench, Common Pleas, and Exchequer Divisions were made masters of the Supreme Court. Section 8 of the Act of 1879 was repealed by the S. L. R. Act, 1894, and since then the duties of associates have been performed by clerks of the Associates Department of the Crown Office Department of the Central Office of the Supreme Court.

The former duties of associates were to keep the records of the Court, to attend Nisi Prius sittings, make out the list of cases, conduct the jury ballot, note the judgment, make up the *postea* (or certificate of the result of trial), and deliver the record to the proper party. They performed generally the clerical and administrative functions connected with their respective Courts: and the duties of their successors are, subject to alterations made by rules of Court, still much the same.

The Clerk of Assize (q.v.) performed and still performs on circuit duties analogous to those of an associate.

Association, the writ of association was used to associate a person or persons with another in the performance of various functions. See, for instance, ADMITTENDO IN SOCIUM.

Association, Memorandum of; Articles of. Any seven or more persons (or, in the case of a private company, any two or more persons) may by subscribing their names to a memorandum and otherwise complying with the statutory requirements as to registration, form an incorporated company with or without limited liability (Companies (Consolidation) Act, 1908, s 2). Whatever be the kind of company which is formed, the memorandum must state (*a*) its name, (*b*) whether the registered office is to be in England, Ireland, or Scotland, and (*c*) its objects; and every subscriber must subscribe it, if it has a share capital, with the number of shares he takes (*ib.*, ss. 3, 4, 5). The Act (ss. 3, 5) contain further provisions applicable to the case of each particular kind of company.

Articles of association are regulations for the management of a company. See ss. 10-13, 285 of the Companies (Consolidation) Act, 1908, which gives in Table A a specimen set of articles applicable to the case of a company limited by shares.

Assumpsit. This word, meaning "he promised," was the name, before the Judicature Acts (see ACTIONS), of the action which lay to recover damages for breach of simple contract, that is to say, of a contract, either express or implied, not under seal. Claims in actions of *assumpsit* were divided into *indebitatus* (or common or money counts) and special counts. The *indebitatus* counts most frequently used were in respect of debts for goods sold and delivered or bargained and sold, work done, money lent, paid or received, interest, and on account stated—where, in fact, a simple contract had resulted in a money debt. The special counts were used where damages were sought for the non-performance of the contract, and also occasionally where it was desirable to set out the terms of the contract.

Assumpsit was an action on the case (q.v.). It has been abolished by the Judicature Acts.

Assurance; Assure. "Assure" and "assurance" are the old words for "convey" and "conveyance" (q.v.). They are still used in this sense as regards the "covenant for further assurance," which is implied in every conveyance at the present day. See COVENANT.

"Assure" and "assurance" are also equivalent to "insure" and "insurance" (q.v.). In statutes, and in conveyances and other instruments, the words "assure" and "assurance" are generally used with reference to life insurance, while the words "insure" and "insurance" are generally used with reference to fire, marine, accident, and other kinds of insurance. See INSURANCE.

Aster; Homo aster, used by Britton as meaning a resident. Compare ASTRUM.

Astrarius hæres, an heir-apparent to whom, during the life of an ancestor, a dwelling which the heir would have got upon the death of the ancestor was conveyed by deed.

Astrum, in the reign of Edward I. this meant a house.

Asylum. This means primarily a place in which there is safety from pursuit. See SANCTUARY.

Its more important and general meaning is a place, whether public or private, for the reception and treatment of the insane. The law as to such places is to be found in the Lunacy Acts, 1890 to 1911. But it is to be noted that, for the purposes of those Acts, the term "asylum" is defined to mean "an asylum for lunatics provided by a county or borough or by a union of counties and boroughs" (Act of 1890, s. 341), so that houses licensed under those Acts for the reception of lunatics, and hospitals and workhouses into which lunatics are received, are not asylums for the purposes of those Acts. It is also to be observed that the persons who may be received into asylums or other places sanctioned by the Lunacy Acts are lunatics, which (Act of 1890, s. 341) means idiots or persons of unsound mind. Idiots, along with imbeciles, feeble-minded persons and moral imbeciles are defined by s. 1 of the Mental Deficiency Act, 1913, as being defectives for the purposes of that Act, and may be detained in institutions pursuant to that Act; but an institution used for the detention of idiots under the Act of 1913 is not an asylum merely because it is so used.

See also CRIMINAL LUNATIC ASYLUMS.

Asylums Board. The Metropolitan Asylums Board (otherwise known as the Metropolitan Asylums Managers) was constituted by order of the Poor Law Board, made 15th May, 1867, pursuant to the Metropolitan Poor Act, 1867, s. 8. That order has been amended by various orders under the Act of 1867 and subsequent amending Acts. The Board is entrusted with the organisation of the arrangements for dealing, in the administrative county of London, with insanity and infectious disease amongst the poor.

The Lancashire Asylums Board is entrusted with the management of four pauper lunatic asylums in Lancashire. It was constituted by the Lancashire County Council pursuant to the Lancashire County (Lunatic Asylums and other Powers) Act, 1891 (54 Vict. c. xx.).

Athelstan, Laws of (*Circa.* 930). Six series of these are extant. The first deals with payment of tithes and church dues. The second, third, fourth, and fifth are concerned mainly with the administration of justice. The sixth deals chiefly with London gilds. See ATTENBOROUGH; *Laws of the Early English Kings* (1922), p. 122.

A tempore cujus contrarii memoria non existet. (From a time where there is no memory to the contrary.) See MEMORY.

Atia, ill will; hatred. See ODIO ET ATIA.

At large, used formerly in various combinations, such as "common at large" (which was synonymous with "common (q.v.) in gross"), "verdict (q.v.) at large" (or special verdict), etc.

Attachiamenta bonorum. At a remote period this was a distress of the goods and chattels of a man for debt or where he was security.

Attachiamenta de spinis et bosco, the right of forest officers to take thorns and brushwood for their own use.

Attachiators, bailiffs. They levied, for instance, *attachiamenta bonorum* (q.v.).

Attachment. To attach a person is to arrest him under a writ called a writ of attachment: to attach property it to seize it or place it under the control of a Court.

Attachment of the person is of two kinds, that employed in ordinary cases of disobedience to an order, judgment, etc. or other contempt of Court committed in the course of a suit, and that employed where no suit is pending. The former kind is one mode of enforcing obedience to the orders of the High Court of Justice, such as injunctions, orders for discovery and production, and certain judgments. The writ is issued by leave of the Court or a judge on notice to the person concerned (Ord. XLIV., r. 2), and directs the sheriff to arrest him. The contemnor then remains in prison until he has cleared his contempt or is discharged. An attachment to enforce a mere money demand can only be issued in the cases mentioned in the Debtors Act, 1869, s. 4; e.g. against a defaulting trustee, and in such cases no person can be imprisoned for more than a year (*ib.*). The Court has a discretion to refuse the attachment (Debtors Act, 1878). See also COMMITTAL. The other kind of attachment is issued to punish disobedience to the King's writs, contempt of Court, disobedience to the rules or awards of a Court, abuse of the process of a Court, forgeries of writs, etc. Its peculiarity, says Hawkins, in his *Pleas of the Crown*, is that it " may be awarded by the discretion of the justices upon a bare suggestion, or of their own knowledge, without any appeal, indictment, or information." If it is awarded on the complaint of a private person, the procedure is governed by Ord. XLIV.

Attachment of property is of importance in two cases—attachment of debts, and attachment in the Mayor's Court.

Attachment of debts is a proceeding employed in actions in the High Court where a judgment for the payment of money has been obtained against a person to whom money is owing by another person; in such a case the judgment creditor, on application *ex parte* at chambers, may obtain an order that all debts owing or accruing from that person (who is called the garnishee) to the judgment debtor shall be attached to answer the judgment debt. The effect of this order is to bind the debt (unless it be exempted by statute from attachment) in the hands of the garnishee as soon as he is served with the order, so that he cannot deal with it until the judgment creditor's claim is disposed of on an application by the judgment creditor that the garnishee shall show cause why the garnishee should not pay to the judgment creditor so much of the debt due to the judgment creditor as is necessary to satisfy the judgment debt and costs (Ord. XLV., rr. 1, 2). If the garnishee does not dispute the debt, he may pay the amount into Court. In the County Court there is an analogous procedure: see County Court Rules, Ord. XXVI. See WAGES.

As to attachment in the Lord Mayor's or City of London Court, see FOREIGN ATTACHMENT.

As to the obsolete reattachment, see that title.

Attachment of the Forest, the lowest of the three Courts formerly held in the king's forests. The Justices in Eyre's Seat was the highest, and the next was the Swainmote.

" Attachment of Privilege is where a man by virtue of his privilege calls another to that Court whereto he himself belongs, and in respect thereof is privileged, there to answer some action; or it is a power to arrest in a place privileged " (*Jacob*, ed. of 1739). Under the ancient law certain persons had the privilege of being sued only in a particular Court. Thus attornies of the Court of Common Pleas could be sued only therein. Compare the maxim *Actor sequitur, etc.*

Down to the enactment of the statute 8 & 9 Wm. 3, c. 26, privilege from arrest for debt was claimed for the Savoy, Mitre Court, Whitefriars, and other places in London. See PRIVILEGED PLACE.

Attainder was that extinction of civil rights and capacities which formerly took place when judgment of death or outlawry was recorded against a person who had committed treason or felony. The two principal consequences were the forfeiture and escheat of the land and goods belonging to the criminal (see ESCHEAT; FORFEITURE), and the corruption of his blood, by which was meant that he became incapable of holding or inheriting land, or of transmitting a title by descent to any other person. These consequences of attainder were mitigated by various Acts of Parliament; and finally the Forfeiture Act, 1870, wholly abolished attainder, corruption of blood, forfeiture, and escheat for treason or felony, preserving them, however, in the case of outlawry.

Attainder was also produced by Acts of Parliament known as Bills of Attainder, the first of which was passed in 1459. See BILL OF PAINS AND PENALTIES.

Attaint. A person was said to be attaint

when he was under attainder (q.v.). Compare CONVICT.

At attaint or writ of attaint was anciently a proceeding "to enquire whether a jurie of twelve men gave a false verdict, that so the judgment following upon it may bee reversed, and the partie restored to all that he hath lost." For this purpose a jury of twenty-four (called the grand jury) was summoned by a writ of attaint to try the validity of the verdict of the first, or, as it was called for distinction, the petty jury, and if the second jury's verdict was contrary to the first, not only was the first verdict set aside, but the first jury lost all civil rights and became liable to other punishments. Proceeding by attaint was abolished by the County Juries Act, 1825, s. 60. At the present day, when a verdict in a civil case is suspected of being false or erroneous, a motion is made for a new trial. See TERRIS LIBERANDIS.

Attempt. This means the doing of some overt act for the purpose of committing some offence. It is not invariably necessary that it should be possible for the accused to commit the offence in question. Thus a man may be convicted of attempt to steal when, with intent to steal, he puts his hand into an empty pocket; but, on the other hand, a boy under fourteen, being incapable in law of committing rape, cannot be convicted of an attempt to commit that offence.

At common law, it is a misdemeanour to attempt to commit treason or any felony or misdemeanour; but, in practice, offenders are prosecuted under various enactments which make attempts to commit various offences punishable with various terms of imprisonment or penal servitude either as felony or misdemeanour; and the Criminal Procedure Act, 1851, s. 9, enacts that any person charged with either a felony or a misdemeanour may, if the evidence proves only an attempt, be convicted of the attempt.

Attendant Term. See TERM.

Attentat. In the ecclesiastical law, this means anything wrongfully done by a judge in a matter pending an appeal from his decision.

Attermine, to allow time for the payment of a debt.

Attest; Attestation. To attest is literally to witness any act or event, but the term is now exclusively applied to the signature or execution of a document. When A executes a deed in the presence of B, and B signs his name on the document as a token of his having witnessed A's execution, B is said to attest the execution.

As to the attestation of wills, see that title.

Attestation Clause. This means the statement that a will has been duly witnessed by two witnesses, as required by the Wills Act, 1837, s. 9, which is always appended to a will drafted by a professional or other competent person. The shortest satisfactory form reads: "Signed by the above-named testator in the joint presence of us who in his presence and that of each other have hereunto subscribed our names as witnesses."

Attested Copy (of a document). This expression is sometimes used to mean an examined copy (q.v.) on which a certificate of its correctness is written by the person or persons by whom the copy was examined. But as regards an examined copy such certificate is of no effect; for the fact of examination must be proved by oral evidence before an examined copy can be admitted as evidence.

Attorn, to make attornment (q.v.).

Attornato recipiendo, De, a writ which anciently lay to the sheriff in the county court or to the steward of a hundred-court to compel him to permit the attorney—that is to say the representative—of a suitor to appear. See the statute 20 Hen. 3, c. 10.

Attorney. This, said an old writer, "is an ancient English word, and signifieth one that is set in the turne, stead, or place of another; and of these some be private . . . and some be publike, as attorneys at law."

A private attorney is a person appointed by another to act in his place or represent him for a certain purpose: the document by which the appointment is made is called a power or letter of attorney. See POWER OF ATTORNEY.

Attorneys at law were formerly persons admitted to practise in the superior Courts of common law: they conducted proceedings in those Courts for suitors who did not appear in person. In practice every attorney was also a solicitor (q.v.), and was called an attorney only in formal proceedings in the common law Courts. Now, by the Judicature Act, 1873, s 87, the expression "attorney" is abolished, and the title "Solicitor of the Supreme Court of Judicature" is substituted. See COMMON PLEADER.

Attorney-General is the principal counsel of the Crown. He is appointed by patent and holds at the pleasure of the Crown. As counsel, he is bound to conduct prosecutions and other legal proceedings on behalf of the Crown, if required to do so. He also acts as representative of the Crown in matters connected with charities and patents, and in criminal proceedings instituted by government. He is paid £7,000 a year and fees, but is precluded, since

rivate clients. His political as well as legal, for he is almost invariably a member of the House of Commons, and is appointed to his office on the advice of the Government for the time being: there is therefore a change of Attorney-General on every change of Government. In the House of Commons, he answers questions on legal matters of public interest and has charge of Government measures relating to legal subjects.

The Prince of Wales has an attorney-general. There is also an attorney-general of the County Palatine Court of the County Palatine of Lancaster (q.v.).

In most of the Crown colonies, and in all the self-governing colonies, the chief law officer is styled the Attorney-General.

See LAW OFFICERS; QUEEN.

Attornment. Attornment is the agreement of the owner of a particular estate in land to become the tenant of a person who has acquired the estate next in reversion or remainder, or the right to the rent or other services by which the land is held. Thus if A, being entitled to land in fee simple, grants a lease of it to B, then B is A's tenant. If, however, A conveys his remainder to C, in this case B does not stand in the relation of tenant to C, unless he agrees or consents to become his tenant; and this consent is called an attornment. It may be either express (in deed) or implied (in law); thus if the tenant, after notice of the grant of the reversion, pay his rent to the grantee, this is a good attornment in law. By the Distress for Rent Act, 1737, s. 11, attornments made by tenants to strangers claiming title to the estate of their landlords are null and void and their landlord's possession is not affected thereby, unless such attornments are made with the privity and consent of the landlord, or in pursuance of a judgment or order. Formerly attornment was necessary in most cases to perfect the grant of a reversion or remainder, so that the grant was ineffectual until it was given. Now, however, by the Landlord and Tenant Act, 1709, s. 9, such grants are effectual without the attornment of any of the tenants, and the grantee of a reversion may sue or distrain on the tenants for the rent if he has given them notice of the grant.

Where a mortgage of land or buildings is executed with the intention that the mortgagor shall remain in possession, it was formerly usual to insert in the mortgage a clause of attornment by which the mortgagor attorns tenant to the mortgagee at a rent equal to the yearly interest on the debt, or sometimes in excess of the interest so as to go towards reduction of the principal. The chief advantage of this was to give the mortgagee a power of distress if the interest (or principal) was not paid. But under the Bills of Sale Acts, 1878 and 1882, an attornment clause is, except in the cases mentioned below, inoperative to enable a mortgagee to recover rent by distress; and such a clause should not be used unless it contains no power of distress and unless it expressly sets forth that the rent is not recoverable by distress; and, if used in that form, it enables the mortgagee to recover the land expeditiously under R. S. C., Ord. III., r. 6, and Ord. XIV., r. 1. But in the cases of debentures, and of mortgages of property situated abroad, an attornment clause with power of distress can still be used.

Attraction, Doctrine of. This is the name of a rule that if a barony in fee becomes vested in the tenant in tail male of an earldom, the descent of the barony thereafter follows the descent of the earldom, the barony being attracted by the earldom and being inseparable from it. In England this doctrine was rejected in 1640, when, in the *Grey de Ruthin Case*, it was held by the House of Lords that, where an earldom becomes extinct, the barony will nevertheless descend to the heir general; and it was again, and finally, rejected in 1668 in the case of the claim to the barony of Fitzwalter, the last holder of which was also an earl who had died without heir to the earldom but leaving an heir to the barony. In Scotland, however, the doctrine is believed to prevail.

Auction; Auctioneer. Sales by auction of land are subject to the Sale of Land by Auction Act, 1867, which makes it unlawful, in every case where a sale is stated to be without reserve, for the vendor to employ a person to bid at the sale (s. 5); but the vendor may, in the particulars or conditions of sale, reserve the right to bid and employ a person (colloquially known as a "puffer") to bid accordingly (s. 6). The Sale of Goods Act, 1893, s. 58 (3) (4), contains similar provisions with regard to the sale of goods. At common law, the employment of a puffer made a sale by auction void in all cases. An auctioneer is required to take out a licence, for which a duty of £10 is payable annually, under the Auctioneers Act, 1845, except for the sale of distress under £20 or for certain sales by order of a Court for sums not exceeding £20 (*ib.*, s. 5) and for the sale of fish on the seashore where the fish has been landed (Customs and Inland Revenue Act, 1870).

In addition to the ordinary auction, there is the Dutch auction, in which the property is put up first at an obviously excessive price and is then offered at gradually decreasing prices until a price is reached with which someone closes. There is also the auction by inch of candle, in which the sale remains open while the candle continues to burn and the property is knocked down to whoever makes the last bid before the candle goes out. Jacob, writing in 1739, speaks of the last-mentioned form of auction as ordinary amongst merchants: it is now obsolete except in a few places where it is used for the letting of the property of a charity.

Where an auction is held with confederates of the seller who pose as *bona fide* bidders but who really make only sham bids in order to induce other persons to purchase, there is said to be a "mock auction." There is then a conspiracy to defraud, and everyone engaged in it is guilty of an indictable offence.

See DUMB BIDDINGS; KNOCK-OUTS; VALUATION AND APPRAISEMENT.

Auctionarii, used in the reign of Edward I. as meaning retailers or brokers.

Aucupia verborum sunt judice indigna (*Hob.* 343). (Quibbles are beneath the dignity of a judge.)

Audi alteram partem (Hear the other side)—an injunction which means that no man should be condemned unheard or without having had an opportunity of being heard.

Audience Court. See COURTS OF AUDIENCE.

Audiendo et terminando, De. This was a writ, or rather a commission, anciently issued upon the occasion of an insurrection or a great riot, authorising certain named persons to restore order and to punish the guilty parties. Although the translation of the words is precisely the same as that of *Oyer and Terminer*, (q.v.) the two commissions were always distinct.

Audita querela, in the old common law practice, was a writ given in order to afford a remedy to the defendant in an action where matter of defence (such as a release) had arisen since the judgment, and on which the defendant applied to the Court, whence the name *audita querelâ defendentis* "the defendant's complaint having been heard." The proceeding by *audita querelâ* is abolished, the present practice being to apply for a stay of execution or other relief against the judgment (R. S. C. Ord. XLII., r. 27).

Auditor of the Receipts, an officer of the Exchequer who supervised the tellers and in the time of Coke "saw every teller's money locked up in the Treasury." He was abolished by the statute 4 & 5 Will. 4, c. 15, s. 1.

Auditors of the Imprest. When Jacobs wrote in 1749, these were officers of the Exchequer who audited the imprest-money (q.v.) and the expenses of the army, the navy, the customs, the mint, etc.

Augmentations, Court of. The property of the religious houses, having been forfeited to the Crown by the statute 27 Hen. 8, c. 28, the statute 27 Hen. 8, c. 27 (which obviously was passed after c. 28) created a court ("commonly to be called the Courte of Thaugmentacions of the Revenues of the Kinges Crowne"), the function whereof was to see that the King was "well truely and justely aunswered and paied" in the matter of the property of the religious houses. The statute 7 Edw. 6, c. 2, empowered the King to, *inter alia*, dissolve the Court, but its existence was in fact terminated only by letters patent of Mary, issued pursuant to the statute 1 Mar. sess. 2, c. 10, which transferred to the Exchequer the management of such of the abbey lands as had been retained by the Crown. The valuable records of the Court were preserved in the Augmentation Office until they were finally transferred to the Public Record Office.

Augusta legibus soluta non est (1 *Bl. Com.* 219). (The wife of the emperor is subject to the laws.) Used to indicate the legal position of a queen consort.

Aula Regis. After the Conquest this was the King's Court or Curia Regis. From it all the Courts of Justice have emanated; likewise the High Court of Parliament and the Privy Council.

See COMMON PLEAS; EXCHEQUER; KING'S BENCH; CONSILIUM MAGNUM.

Aulnager; Alnager; Alneger; Alnagenor. This was an officer, first appointed in the reign of Edward III., whose duty it was to measure all woollen cloth made for sale, in order to ascertain the duty payable to the Crown. In the time of Coke the office was divided into those of the original aulnager, the measurer, and the searcher. All three were abolished by the statute 11 & 12 Will. 4, c. 20.

Aume; Awm, a measure of Rhenish wine containing forty gallons: mentioned in the statutes 1 Jac. 1, c. 23 and 12 Car. 2, c. 4.

Aumone, alms. Tenure in aumone was the same as tenure in *frankalmoign* (q.v.).

Auncel weight; also known as ansel or ansul weight. A method of weighing which was prohibited by the statutes 25 Edw. 3, c. 5, s. 9, and 8 Hen. 6, c. 5, s. 1, as being fraudulent.

Nothing is known as to what precisely it was. The explanations given by the various writers of legal dictionaries are based upon what are now recognised as being absurd etymologies; and they are quite worthless. See *Murray, sub verb.*

Aures, literally "the ears." Fleta mentions *aures,* or the cutting off of ears, as a Saxon punishment for theft and other crimes.

Aurum Reginæ, the QUEEN-GOLD (q.v.).

Austurcus; Osturcus, the goshawk. *Unus austurcus* was occasionally the rent reserved for lands in early times.

Auter. See AUTRE.

Authority. A person is said to be authorised or to have an authority when he is in such a position that he can act in a certain manner (defined by the authority) (*a*) without incurring the liability to which he would be exposed in the absence of the authority; and (*b*) so as to produce the same effect as if the person granting the authority had himself done the act. Thus, if I authorise A to sell goods for me, and he does so, he incurs no liability for so doing, and confers a good title on the purchaser. See AGENT; WARRANTY.

With reference to the mode of its creation, an authority may be either express (as in the above instance), implied (or inferred), implied in law, customary (e.g. the right of a lord of a manor to make grants of land in the manor), or statutory, etc. See FACTORS ACT.

With reference to its extent: an authority may be general, to act in all the principal's affairs, or special, concerning some particular object (e.g. to buy a particular piece of land); it may be limited by certain instructions as to the conduct he is to pursue, or unlimited, i.e., leaving his conduct to his discretion. See AGENCY.

A mere, bare, or naked authority is an authority which exists only for the benefit of the principal, and which, therefore, the agent must execute in accordance with his directions, as opposed to an authority coupled with an interest where the person vested with the authority has a right to exercise it, partly or wholly, for his own benefit. Thus, an authority to collect debts, given by the owner of a business on his assigning it to a purchaser, is an authority coupled with an interest, because the purchaser, by purchasing the business, has acquired the right to obtain the benefit of it. A mere authority is revocable by the grantor at any time; one coupled with an interest is not. See POWER.

In the law relating to public administration, an authority is a body having jurisdiction in certain matters of a public nature. Thus, sanitary authorities have powers in relation to the public health; of a similar nature are prison authorities, local authorities for the execution of various Acts of Parliament, all of which have only a local jurisdiction. Lighthouse authorities, on the other hand, are divided into general lighthouse authorities (e.g. the Trinity House) (Merchant Shipping Act, 1894, s. 634) and local lighthouse authorities (*ib.*).

Decisions and the opinions of text-book writers of repute are known amongst barristers as "authorities."

Autre Droit. An executor or administrator entitled as such to property, and not in his own right (i.e., *in son droit*), is said to be entitled *in autre droit,* i.e., in right of his testator, or of the beneficiaries entitled under the testator's will.

Autre vie. A tenant for life is commonly entitled for his own life; if he should be entitled for the life of a third person, he is said to be a tenant *pur autre vie,* that is to say, for the life of another person. See TENANT FOR LIFE.

Autrefois acquit (= "formerly acquitted") is a plea in bar to a criminal prosecution, to the effect that the prisoner has been already tried for the same offence before a Court of competent jurisdiction and has been acquitted. Such a plea, if true, is a good defence. The rejection of a bill of indictment by a grand jury is not an acquittal, nor is a refusal of informations by justices.

Autrefois attaint (= "formerly attainted") is a plea in bar to a prosecution. Formerly if a man was attainted of treason or felony, he could not be indicted for another felony while the attainder remained in force, because he was considered dead in law. But by the Criminal Law Act, 1827, s. 1, attainder was made no bar to an indictment except for the same offence; and by the Forfeiture Act, 1870 (see ATTAINDER) attainder was abolished except in case of outlawry; so that in effect the plea of *autrefois attaint* is now obsolete.

Autrefois convict (="formerly convicted") is a plea in bar to a criminal prosecution, by which the prisoner alleges that he has been already tried and convicted for the same offence before a Court of competent jurisdiction. Such a plea, if true, is a good defence.

Auxiliary jurisdiction was the jurisdiction exercised by equity "in aid" (i.e., *in auxilio*) of the common law, principally by helping a plaintiff at law to the evidence necessary to support his action at law. It is completely obsolete since the Judicature Acts.

Auxilium, an AID (q.v.).

Avage, a payment formerly made annually by tenants of the Manor of Writtel for swine sent by them to feed in the woods of the lord.

Avail of Marriage, the same as value of marriage: see MARRIAGE, VALUE OF.

Avenage. Anciently this meant the payment of oats as rent for land.

Avenor, an officer of the royal household who provided oats for the stable; see the statute 12 Car. 2, c. 8.

Aventure. Anciently this meant death by accident pure and simple, as where a man falls overboard; compare INFORTUNIUM, HOMICIDE PER, in which case the act of some person other than the deceased is a contributing cause.

Aver. This meant (1) a beast of the plough, and (2) money or other forms of wealth.

Aver; Averment. In pleading, to aver is to allege, and an averment is an allegation. The primary meaning of aver was to verify or prove to be true (e.g. to aver a writ) from the old French *averer* from Latin *ad* and *verus*, true. See DIVISIBLE AVERMENTS.

Avera. Used in *Domesday* as meaning a day's work of a ploughman.

Average. In the ordinary sense of the word, average is where goods on board a ship, or part of the ship herself, are lost or damaged. Simple, petty, or particular average is where any damage is done to the cargo or vessel by accident or otherwise, but not for the general benefit of the ship and cargo, such as the loss of an anchor or cable, the starting of a plank, the turning sour of a cargo of wine, "which are all losses which rest where they fall"; that is to say, the loss in each case is borne by the owner of the thing damaged or lost, or the person who has insured him (see MEMORANDUM). The term "average," however, is usually applied to cases of general (or gross) average, which is a highly important branch of maritime law. General average is where any loss or damage is voluntarily and properly incurred in respect of the goods or of the ship for the general safety of the ship and cargo; in this event the law provides that an equitable adjustment and distribution of the loss shall be made between all the parties interested, each contributing his share. The simplest and oldest case of general average occurs where goods are thrown overboard in a storm for the purpose of saving the ship and the rest of the cargo; here the several persons interested in the ship, freight and cargo must contribute rateably to indemnify the person whose goods have been sacrificed against all but his proportion of the general loss (see JETTISON). So, where a ship was, in the course of her voyage, run foul of by another ship, owing to the violence of the wind and weather, and was damaged, and the master was in consequence obliged to cut away part of the rigging, the expenses of repairs were held to be a general average. See ADJUSTMENT; CONTRIBUTION.

Average also denotes some petty charges, such as towage, beaconage, etc., which the owner or consignee of goods shipped on board a vessel is bound to reimburse the master or shipowner. It is generally stipulated for in the bill of lading (q.v. and PRIMAGE).

Anciently it meant a service due by a tenant to his lord. The nature of the service is not clear. It is stated by some authorities to have been the service of working with beasts of burden for the lord.

Average of Cornfields. Anciently this meant the stubble.

Average Penny, apparently the same as AVER-PENNY (q.v.).

A verbis legis non est recedendum (5 *Rep.* 118).—(You must not vary the words of a statute.) The meaning of this maxim appears from the context:—"And the judges said that they ought not to make any construction against the express letter of the statute; for nothing can so express the meaning of the makers of the Act as their own express words, for *index animi sermo* [q.v.]. And it would be dangerous to give scope to make a construction in any case against the express words, when the meaning of the makers doth not appear to the contrary; and when no inconvenience will thereupon follow; and therefore in such cases *a verbis legis non est recedendum.*" Compare QUOTIENS IN VERBIS, ETC.

Aver-corn, corn payable as rent in ancient times.

Averia, cattle.

Averiis captis in withernam, De. Where a man had unlawfully distrained cattle and taken them out of the county where they had been distrained, so that they could not be replevied (that is to say, recovered by replevin (q.v.)), then this writ lay for the owner of the cattle so distrained and authorised the sheriff to take for him other cattle belonging to him who had illegally distrained. See CAPIAS; EXECUTIONE FACIENDA IN WITHERNAM.

Averiis Repleviandis, De, a writ which anciently lay for the replevin of cattle.

Averium, the best beast formerly due as a heriot (q.v.) on the death of a tenant.

Aver-land, land which tenants were bound to plough and manure for the use of their lord

Averment. See AVER.

Aver-penny. Anciently this was an annual rent or payment in commutation of average, in the sense of a burden or service.

Averrare. Anciently this meant to carry the goods of the lord: it seems to have been a service due by some tenants.

Aver-silver, apparently the same as aver-penny (q.v.).

A vinculo matrimonii. See DIVORCE.

Avisage = AVAGE.

Avoid, to avoid a transaction is to make it void. A person is said to avoid a contract by setting up, as a defence in a legal proceeding taken to enforce it, some defect which prevents it from being enforceable: thus, if an action is brought against a person on a contract either void or voidable by him, he avoids it by setting up that defence; similarly if he brings an action to have a voidable contract, settlement, etc., declared void.

As to the former law regarding the avoidance of voluntary conveyances of land, see SETTLEMENT; FRAUDULENT CONVEYANCE.

Avoidance has a general application in law, and denotes setting aside or avoiding or vacating: e.g., the avoidance of a fraudulent conveyance is the setting such conveyance aside; the avoidance of a benefice is the vacating thereof; and so on.

The word is chiefly used in connection with benefices, as in the Simony Act, 1713, s. 2, which prohibits the acquisition by a clerk for money of "the next avoidance of or presentation to any benefice."

A bond is said to be conditioned for avoidance when it contains a condition providing that it shall be void on a certain event. (See BOND; CONDITION; VOID.)

Avoirdupois, a corruption of *avoir de pois* (to have weight). Another form was *averde-pois*. It meant either the ancient weight, which contained sixteen ounces, or else merchandise sold by that weight. Compare TROY WEIGHT.

See, for instance, the statutes 27 Edw. 3, c. 10, 2 Rich. 2, c. 1, etc., as to the ancient avoirdupois weight. It was regarded as the weight most favourable to the purchaser. Thus, the statute 24 Hen. 8, c. 3 (repealed by the statute 33 Hen. 8, c. 11), which fixed the maximum price of beef and pork at one halfpenny per pound, provided that the weight "called Haberdepayes" should be used "for true serving of the buyers." All measures which are multiples (i.e., the stone, the hundredweight, and the ton) or subdivisions (i.e., the ounce, the dram, and the grain) of the imperial standard pound are avoirdupois weight (Weights and Measures Act, 1878, s. 14); and that weight must be used for the sale of all articles, except precious metals and precious stones, which may be sold by the ounce troy or any decimal part thereof, and drugs sold by retail, which may be sold by apothecaries' weight (*ib.*, s. 20).

Avow; Avowant; Avowry. See REPLEVIN.

Avowterer; Avowtry, ancient forms of "adulterer" and "adultery" respectively.

Avulsion, the cutting off of land from the property to which it belongs, as may conceivably happen if a river changes its course. In such a case the ownership of the land remains unchanged: compare ALLUVION.

Award. See ARBITRATION.

Away-going Crop is one which has been sown or planted during a tenancy, but is not ready for gathering until after its expiration. Sometimes the outgoing tenant has the right, either by agreement or by custom, to cut and take away the crop when it is ripe; sometimes the incoming tenant is bound to buy the crop of him at a valuation. See EMBLEMENTS.

Ayel = AIEL (q.v.).

B

B list. See A AND B LISTS.

Back-bear. See STABLE-STAND.

Back-berende; Back-berand. A thief was said in Bracton's time to be *back-berende* when he actually had the stolen goods on his back. See CONFESSAND.

Back-freight. When goods are shipped to a port but cannot be delivered there for reasons for which the shipowner is not responsible, and the master has therefore to bring the goods either back to the port from which they were shipped or to some other suitable place, then the shipowner is entitled to receive from the owner of the goods freight for the carriage of the goods from the port to which they had been shipped. Such freight is back-freight. It is not, however, payable where the shipowner knows when he receives the goods that the delivery of them would be illegal.

Backgammon. This "and the other games now played with the backgammon tables" are the only games played with dice which the Gaming Act, 1839, does not prohibit.

Backing a warrant is where a magistrate or official duly authorised indorses a warrant which has been issued by a magistrate of another district or jurisdiction, in order that it may be executed within the jurisdiction of the

magistrate or official making the indorsement. As between the various parts of the British Islands (q.v.), this is done under the Indictable Offences Act, 1848, ss. 11—15, the Summary Jurisdiction Act, 1848, s. 3, the Petty Sessions (Ir.) Act, 1851, ss. 27, 29, the Petty Sessions (Ir.) Act. 1867, s. 1, and the Criminal Justice Administration Act, 1851, s. 18; and as between the British Islands and other parts of the King's dominions, it is done under the Fugitive Offenders Act, 1881, s. 3, as extended by the Fugitive Offenders (Protected States) Act, 1915.

A bench warrant (q.v.) may be executed in any part of England without being backed.

Backside. In the law this formerly meant the rear premises of a house. The statute 33 Hen. 8, c. 36, speaks of "houses, with the curtilage, backside and gardeine adjoining."

Backwardation. In the law of the Stock Exchange this means a percentage paid by a seller of stock, deliverable upon a certain date, for the privilege of delaying delivery until some other date. Compare CONTANGO.

Bacon. Francis Bacon was born on the 22nd January, 1560—1, entered as a student at Gray's Inn about 1577, was called to the bar in 1582, entered Parliament in 1586, was made a kind of Queen's Counsel, under Elizabeth, and King's Counsel under James I.; was created Solicitor-General in 1607, Attorney-General in 1613, Privy Councillor in 1616, Lord Keeper in March, 1616—17, and Lord Chancellor in January, 1617—18. In 1618 he was created Baron Verulam, and in 1620 Viscount St. Albans. In the following year he was accused of corruption in his office; and, on his confession, he was deprived of the Great Seal, fined and imprisoned. He was afterwards pardoned, but his health had begun to fail, and he died on the 9th April, 1626. His principal legal works are the "Reading on the Statute of Uses," and some Essays on law reform, but they are insignificant compared with his philosophical writings.

Bagatelle. See BILLIARDS.

Bail (Admiralty). In Admiralty proceedings, where a ship or other property has been arrested (see ARREST), the owner may generally have it released on giving bail to an amount equal to the value of the property. The bail is given by two persons as sureties, who execute a bond called a bail-bond, by which they consent that, if the owner of the property shall not pay, with costs, such sum as may be adjudged against him, execution may issue against them for an amount not exceeding the sum named in the bond (R. S. C., App. A., Pt. II., No. 13). A solicitor's undertaking, under Ord. 29, r. 12, to give bail has been treated as equivalent to bail.

Bail (in civil proceedings other than Admiralty). This means security that a person concerned in civil proceedings will obey the requirements of the Court, and his consequent release or immunity from arrest *quoad* the proceeding in question. It is also used to mean the sureties who give the security.

Formerly bail played an important part of every action at law. There were several kinds of bail, of which the principal are the following: viz. (1) Bail below, or Bail to the sheriff; (2) Bail above, Special Bail, or Bail to the action; (3) Bail in error; and (4) Common Bail. Bail below, or to the sheriff, was such as a defendant put in when arrested upon a writ of *capias ad respondendum* (q.v.). This he did by entering into a bond to the sheriff with sufficient sureties conditioned for his appearance within the period required by the writ: the sheriff was compelled by statute to accept this bond—known as a bail-bond—and to discharge the defendant out of custody. Bail above, special bail, or bail to the action, were persons whom the defendant procured to become his sureties for the ultimate payment of the debt and costs in the action, in the event of judgment passing against him, or as an alternative that he should surrender himself to prison. They were termed bail to the action because they were responsible for the defendant's abiding by the event of the action and obeying the judgment of the Court therein, in contradistinction to bail to the sheriff, who only undertook that the defendant should appear according to the exigency of the writ and provide bail to the action. If the plaintiff excepted, that is to say, objected, to the sureties as insufficient, they had to justify (q.v.). The undertaking of the sureties, or bail above, was drawn upon a piece of parchment by the defendant's attorney, and was technically termed the bail-piece. Bail in error were sureties whom a party prosecuting a writ of error (q.v.)—commonly called the plaintiff in error—was required to find, and who undertook that the plaintiff in error should prosecute his writ of error with effect, and that in case the plaintiff failed so to do, or the judgment in the Court below was affirmed, he should pay all the debt, damages, and costs adjudged upon the former judgment, and all costs and damages to be awarded by reason of the delay

of execution on such former judgment. Common bail signified an appearance.

This learning is now only of antiquarian interest. Arrest on *mesne* process (q.v.) has been abolished except in cases within the Debtors Act, 1869, s. 6, which provides that where the plaintiff, in any action in the High Court in which before 1st January, 1870, the defendant would have been liable to arrest (on a *capias*), proves at any time before final judgment to a Judge that he has a good cause of action to the amount of £50 and (1) that the defendant is about to quit England and (2) that the absence of the defendant will materially prejudice the plaintiff's case, the Judge may order the defendant to be arrested and imprisoned for not more than six months unless he give security that he will not leave England without leave of the Court: but in penal actions it is not necessary to prove that the plaintiff will be prejudiced by the absence of the defendant, and the security will be to the effect that the sum recovered in the action shall be paid. See R. S. C. Ord. 69. In cases within the Act of 1869 arrest may also take place on a writ of *ne exeat regno*, under which the defendant will be restrained from leaving the kingdom until he gives security for the amount of the debt.

What in s. 213 of the Common Law Procedure Act, 1852, is described as bail may be required from the defendant in an action by a landlord for the recovery of land from a tenant overholding; and if bail be not forthcoming to cover the costs and damages, judgment will be for the plaintiff: but in view of the facilities afforded to a plaintiff by Ord. 3, r 6, and Ord. 14, this section of the Act of 1852 is seldom availed of. Bail or security is also required on the removal of certain actions from inferior Courts into the High Court; but such bail is of a rather different kind from that with which this article is conversant. See REDDIDIT SE.

Bail (in criminal proceedings). An accused person is said at common law to be admitted to bail when he is released from the custody of officers of the law and is intrusted to the custody of persons known as his sureties, who are bound to produce him to answer, at a specified time and place, the charge against him and who, in default of so doing, are liable to forfeit such sum as is specified when bail is granted. A contract, whether by a person bailed or by a third party, to indemnify a surety is void as being against public policy and, moreover, constitutes an indictable misdemeanour.

No person may be admitted to bail for treason except by order of a Secretary of State or of the King's Bench Division, or of the Vacation Judge (Indictable Offences Act, 1848, s. 13). When anyone is charged with murder or manslaughter on a coroner's inquisition and is committed for trial on the warrant of the coroner or (Coroners Act, 1892) deputy coroner, justices have no power to bail; but the King's Bench Division—which can grant bail for any offence—may bail the accused, and, where the charge is manslaughter, the coroner or deputy coroner may himself grant bail (Coroners Act, 1887, s. 5 (2)). Except in these cases, it is discretionary with a justice to admit to bail any person committed (Indictable Offences Act, 1848, s. 23; Costs in Criminal Cases Act, 1908, s. 1) or remanded (Indictable Offences Act, 1848, s. 21) for any indictable offence. Upon committal for trial (Bail Act, 1898, s. 1) or upon remand (Indictable Offences Act, 1848, s. 21) the justice may require only one surety or may dispense with sureties and release the accused upon only his own recognizance (q.v.). Although justices have the wide discretionary power above stated, they should, in exercising it, have regard to the gravity of the charge, the strength of the evidence, the character or demeanour of the prisoner and the punishment which may be inflicted. It is improper for a justice to grant bail in case of murder, and in such case the accused should be left to apply to the King's Bench Division, which again will grant bail for murder only in a very exceptional case. There is no appeal from the decision of the King's Bench Division on an application for bail; but in case of misdemeanour, the accused, after he has been committed for trial, but not while on remand, has an absolute right to bail from the King's Bench Division (Habeas Corpus Act, 1679, s. 2), and if a justice refuses bail when committing for trial in misdemeanour he must inform the accused of his right to apply to the King's Bench (Criminal Justice Administration Act, 1914, s. 23).

When a justice grants bail, it is for him to fix the amount and the number of sureties and to decide as to the sufficiency of the sureties. The solicitor for the accused ought not to be a surety. Excessive bail ought not to be required (Bill of Rights, 1 Will. & Mary, sess. 2, c. 2).

Where bail is granted with sureties, the recognizances of the sureties may be taken separately and either before or after the recognizances of the person who is being bailed

(Criminal Justice Administration Act, 1914, s. 24). This enactment applies to bail for all offences, whether indictable or non-indictable.

A justice issuing a warrant for the arrest of any person may, by endorsement on the warrant, direct such person to be released when arrested upon his entering into such recognizance as is specified in the indorsement; and in such case the officer in charge of any police station to which such person is brought shall release him on his entering into such recognizance, the sureties, if any, thereto to be approved by such officer (Criminal Justice Administration Act, 1914, s. 21).

Justices may adjourn the hearing of a charge of a non-indictable offence and may, if they do not permit the accused to go at large, commit him in default of his entering into recognizances, with or without sureties, to appear at the further hearing (Summary Jurisdiction Act, 1848, s. 16; Summary Jurisdiction Act, 1879, s. 20 (xi)), or at any further hearing (Criminal Justice Administration Act, 1914, s. 19); and it is to be noted that the power given by s. 19 of the Criminal Justice Administration Act, 1914, applies also to indictable offences.

The Criminal Justice Administration Act, 1914, s. 22, enacts that "On a person being taken into custody for an offence without a warrant, a superintendent or inspector of police or other officer of police of equal or superior rank or in charge of any police station, may, in any case, and shall, if it will not be practicable to bring such person before a Court of summary jurisdiction within twenty-four hours after he was so taken into custody, inquire into the case; and unless the offence appears . . to be of a serious nature, discharge the person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before some Court of summary jurisdiction at the time and place named in the recognizance. . ." Under this enactment the police in general are given power to take bail. But under other Acts, not of general application, the police previously were, and still are, empowered to release prisoners on bail. In places where the Town Police Clauses Act, 1847, is in force—the Act is an adoptive Act (q.v.)—a superior officer of police may, if he thinks it prudent, under s. 17 of that Act, admit to bail persons arrested without warrant when they cannot conveniently be brought before a justice. In cities and towns to which the Municipal Corporations Act, 1882, applies, a person arrested without warrant for a petty misdemeanour while no Court of summary jurisdiction is sitting may, under s. 227 of the Act, be released by the police upon recognizance, with or without sureties, to appear within two days: and similar powers are possessed by the London Metropolitan Police (Metropolitan Police Act, 1829, s. 9; Metropolitan Police Act, 1839, s. 70), and by the City of London Police (City of London Police Act, 1839, 2 & 3 Vict. c. xciv.).

Where a constable, in pursuance of s. 19 (1) (*a*) (*b*) of the Children Act, 1908, arrests without warrant, the person arrested is to be released on bail by the officer in charge of the police station to which he is brought, unless such officer believes that his release would tend to defeat the ends of justice or to cause injury to the child or young person against whom the offence is alleged to have been committed (*ib.*, s. 19 (2)). Under s. 94 of the same Act, a person apparently under the age of sixteen who has been arrested on any charge may, and, except in circumstances stated in the section, must, be released on bail, with sufficient security from the parent or guardian, if no available Court of summary jurisdiction is sitting.

Bail-bond. See BAIL (ADMIRALTY); BAIL (IN CIVIL PROCEEDINGS OTHER THAN ADMIRALTY).

Bail Court. An auxiliary court of the Court of Queen's Bench, at Westminster, wherein points connected more particularly with pleading and practice were argued and determined. It was also known as the Practice Court.

Bailee. A person to whom goods are entrusted for a specific purpose without any intention of transferring the ownership to such person. See BAILMENTS.

A bailee who fraudulently converts to his own use, or to the use of any person other than the owner, anything capable of being stolen (see LARCENY), which he possesses as bailee, is guilty of stealing (Larceny Act, 1916, s. 1 (1)), and such stealing is a felony (*ib.*, s. 2).

Bailiff. This, in the strict sense of the word, is an officer concerned in the administration of justice in a certain district. Formerly persons having the franchise (q.v.) of executing legal process within a liberty or other district appointed their own bailiffs for that purpose; but now "bailiff" usually signifies a sheriff's officer or person employed by the sheriff to serve writs and make arrests and executions. The sheriff being responsible for their acts, his bailiffs are annually bound to him in a bond with sureties for the due execution of their office, and thence are called

l bailiff is a particular person appointed by the sheriff to execute legal process at the request of the person who has obtained it. The sheriff is not liable for the acts of his special bailiff.

Under the Law of Distress Amendment Act, s. 7, no person can act as a bailiff to levy any distress for rent unless he holds a certificate from a County Court.

The County Courts Act, 1888, ss. 33, 34, provides that for every County Court there shall be a high bailiff, to be appointed by the Judge and removable by the Lord Chancellor; The high bailiff may appoint and dismiss at pleasure assistant bailiffs, for whose acts he is to be responsible, as a sheriff is for the acts of his bound-bailiffs; and the high bailiff is to attend sittings of the Court when required by the Judge and is, himself or by his assistant bailiffs, to serve all summonses, orders, warrants, etc., of the Court.

Bailiff also sometimes denotes "a servant that hath administration and charge of lands, goods and chattels to make the best benefit for the owner," as Coke puts it; such a servant in the case of land is frequently known as a steward.

In the municipal system of the Cinque Ports, a bailiff was one of the officers who exercised administrative functions in conjunction with the jurats (q.v.).

Bailiff-errant. See OUTRIDER.

Bailiwick. This means the area under the jurisdiction of a sheriff; or, more literally but less usually, the area within which a bailiff has jurisdiction. Anciently it meant generally the district in which any officer concerned with the administration of justice had authority.

Bailments. Bailment is a contract by which goods are delivered by one person (the bailor) to another person (the bailee) for a certain purpose, upon an express or implied promise by the bailee to return them to the bailor, or to deliver them to someone designated by him, after the purpose has been fulfilled. The bailee is bound to take a certain amount of care of the goods while in his possession, and the amount of care may be expressly fixed by the contract. Where there is no express agreement as to this, one of the following rules, founded on the presumable intention of the parties, is applied: (1) Where the bailment is for the benefit of the bailor alone, the bailee is liable only for gross negligence; (2) where it is for the benefit of the bailee alone, he is bound to use the very strictest diligence; (3) where it is for the benefit of both bailor and bailee, the bailee is only bound to use ordinary and average diligence.

Bailments are of six kinds: the classification being of importance from the different nature of the bailee's liability in each case. The first sort of bailment is, a bare naked bailment of goods, delivered by one man to another to keep for the use of the bailor; and this is called a *depositum*. The second sort is, when goods or chattels that are useful are lent to a friend gratis, to be used and to be eventually returned by him; and this is called *commodatum*, because it is for the convenience or advantage of the bailee. The third sort is, when goods are left for hire with the bailee to be used by him; this is called *locatio et conductio*, and the lender is called *locator* and the borrower *conductor*. The fourth sort is, when goods or chattels are delivered to another as a pawn, to be security to him for money borrowed of him by the bailor; and this is called in Latin *vadium*, and in English a pawn or pledge (q.v.). The fifth sort is, when goods or chattels are delivered to be carried, or something is to be done about them for a reward to be paid by the person who delivers them to the bailee who is to carry them or to do the thing about them; and this is sometimes called *locatio operis faciendi*. The sixth sort is, when there is a delivery of goods or chattels to somebody who is to carry them or do something about them gratis, without any reward for such work or carriage; and this is called *mandatum*. The general rule is, that in the first case the bailee is only answerable for gross negligence, that in the second case he is bound to use the strictest care and diligence, that in the third and fourth cases he is only bound to use ordinary care, and so in the fifth case, unless he is a common carrier (q.v.), and that in the sixth case the bailee is answerable only for gross negligence. See NEGLIGENCE; FACTOR.

Bail-piece. See BAIL (IN CIVIL PROCEEDINGS OTHER THAN ADMIRALTY).

Baines' Acts. The Criminal Procedure Act, 1848 (repealed except as regards Ireland), and the Quarter Sessions Act, 1849. So called because Mathew Talbot Baines, Q.C., M.P.—1847-1859—was mainly responsible for their enactment.

Baiting Animals. This consists of setting one animal to attack another which is tied to a stake or peg (as in bull-baiting) or so confined that it cannot get away (as in badger-baiting). It is now always CRUELTY TO ANIMALS (q.v.).

Bakehouse. For the purposes of the Factory and Workshop Act, 1901, bakehouses are defined, by Schedule 6, Pt. 2 (23) thereof, to be "places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived." A bakehouse is a workshop for the purposes of that Act unless it is a non-textile factory (*ib.*, s. 149 (1)), and it is a non-textile factory for the purposes of the Act when any mechanical power is used within it or within its close or curtilage or precincts (*ib.*). Whether it be a workshop or a factory, it is subject to a multiplicity of provisions, under the Act of 1901 and other Acts, for the purpose of enforcing cleanliness, ventilation, and conditions which make for the health of those employed and the wholesomeness of the bread, etc., which is baked.

Balance Order. This is the usual and proper means of enforcing payment of calls (q.v.) in the winding up, whether voluntary or compulsory, of a company. It is obtained on summons in Chambers by the liquidator (Company (Winding-up) Rules, 1909, r. 87) under s. 166 of the Companies (Consolidation) Act, 1908, in the case of a compulsory winding up, and under s. 193 of the same Act in the case of a voluntary winding up. It may be enforced in the same manner as a judgment to the same effect (R. S. C., Ord. 42, r. 24).

As to the order in which members of a company are liable for calls, see A AND B LISTS; CONTRIBUTORIES.

Balk. A strip of untilled land used formerly as a boundary between tilled land in different ownership or between portions of the land of the one owner. It seems to have meant the same thing as a meer or boundary. It is doubtful as to whether there is any presumption as to balks being the property of the owners of lands divided by them. They were frequently waste (q.v.) of a manor.

Ballast. This now means anything, whether water, stones, metal or sand, inside a vessel, or lead or iron, inside or outside, used to keep her in proper trim and from capsizing; but anciently it meant "gravel or sand to poise ships and make them go upright," and any person removing ballast, in the ancient sense, from any port, harbour or haven or the shore thereof, or throwing ballast into any such place, is liable to a penalty of £10 under the Harbours Act, 1814, ss. 11, 14; see also the Harbours Clauses Act, 1847, s. 73. For the purposes of the Thames Conservancy Act, 1894, 57 & 58 Vict. c. clxxxvii., ballast is, by s. 3 of that Act, defined as including "every kind of gravel, sand and soil and every commodity or thing commonly used for the ballasting of vessels."

Balliage. See PACKAGE.

Ballivo amovendo, De. A writ which anciently lay for the removal of a bailiff of a liberty or a hundred who had not the property qualification required by the Statute of Westminster II.—the bailiff here referred to was of course an officer entrusted with the performance of judicial functions.

Ballot; Ballot Box; Ballot Paper. This originally meant a system of voting for or against a candidate for membership of a society by means of little balls, one of which is white (for acceptance) and the other black (for rejection), put into a box so that the vote recorded by any particular person is known only to himself; and in the case of candidates for an office it meant voting by writing the name of a selected candidate on a piece of paper which was rolled into a ball and thrown into a receptacle. It has, however, come to be used more widely as meaning any system of voting under which the vote given by each voter remains secret. Such a system was introduced for the purpose of Parliamentary elections (other than those for universities) by the Ballot Act, 1872. Under this Act each voter is given a paper called a ballot paper, bearing the names of the candidates: he puts a cross secretly opposite the name of the candidate for whom he desires to vote; and then he puts the paper into a box called the ballot box. The system has since been applied to the election of representative bodies, from county councils down to school boards.

Section 3 of the Act of 1872 provides heavy penalties for a variety of such things as may be done for the purpose of interfering with the proper conduct of the ballot at Parliamentary elections; and like penalties are provided by other Acts governing the other elections to which the ballot has been applied.

Ballot and Sale Society. A building society (q.v.) in which the right to receive an advance from the funds of the society is determined alternately by a ballot of the members and by putting up the right to auction. The Building Societies Act, 1894, s. 12 (1), provides that no building society established after the 25th August, 1894, shall ballot for advances; and ballot and sale societies are, therefore, now comparatively rare.

Banc, or Banco, Sitting in. The sittings *in banc*, or *in banco*, were those which, before the Judicature Acts came into force, were held at Westminster by the Judges of the King's or Queen's Bench, the Common

Pleas, and the Exchequer for the purpose of determining questions of law. These sittings were held not only during term but on certain appointed days after term. When sitting *in banc*, the Judges dealt only with questions of law, while, when sitting at Nisi Prius or on circuit, they dealt only with questions of fact. Four Judges usually sat together *in banc*, while at Nisi Prius or on circuit Judges sat singly.

The business of the Courts *in banc* was transferred by s. 41 of the Judicature Act, 1873, to the Divisional Courts established pursuant to that Act; but by s. 17 of the Appellate Jurisdiction Act, 1876, much of the business which had been transferred to the Divisional Courts was transferred to a single Judge. See APPELLATE JURISDICTION ACTS; RETURN DAYS.

Bancus superior; Bancus publicus. The Upper Bench; the Public Bench. The Court which is ordinarily known as the King's Bench was known by the above names during the Protectorate. Thus Style's Reports (1645-1655), published in 1658, are described on the title-page as " . . . Reports begun in the now Upper Bench Court at Westminster in the beginning of Hilary Term 21 Caroli and continued to the end of Michaelmas Term 1655. . . ."

Banishment. This imported a loss of country. It might arise from a quitting and forsaking of the realm upon abjuration (q.v.); or it might be ordered under an Act of Parliament, such, for instance, as the statute 39 Eliz. c. 4, s. 4, which provided for the banishment of dangerous rogues; or the Roman Catholic Relief Act, 1829, s. 34, which provided for the banishment of Jesuits. After the disuse of abjuration (q.v.) the law was that " no subject shall be exiled or banished his country whereby he shall *perdere patriam* but by authority of parliament " (*Co. Litt.* 133a). Exile and banishment were synonymous.

The term " banishment " does not seem to have been used in statutes since 1829. Thus the Aliens Act, 1848, empowered certain non-judicial high officials to order aliens to " depart this realm " and provided for their punishment if found within the realm in contravention of such order; and under the Aliens Act, 1905, s. 3 (1), the Home Secretary may, in certain circumstances, order an alien " to leave the United Kingdom and . . . remain out of the United Kingdom." But any such order has this in common with a sentence of banishment, that in neither case does this country concern itself with where the person concerned may live provided only that he goes and keeps out of the realm. Transportation (q.v.) was of quite a different nature from banishment.

Bank; Banker. A banker is a person who receives the money of his customers on deposit, and pays it out again in a manner agreed on between them, *e.g.* by cashing cheques or drafts (q.v.) drawn on him by the customer. In the meantime he employs the money by lending it at interest, discounting bills, etc. The relation between banker and customer is that of debtor and creditor (with a superadded obligation arising out of the custom of bankers to honour the drafts of customers), not of trustee and *cestui que trust* or of principal and agent, and consequently money lying with a bank for six years, without any drawing by the customer or allowance of interest by the bank, becomes in law the property of the bank: but this right is never availed of by bankers. Some banks are also banks of issue, that is, they issue promissory notes payable to bearer on demand (see BANK NOTE); of these the Bank of England (q.v.) is the most important.

The Money-Lenders Act, 1900, s. 6, enacts that a banker is not a money lender for the purposes of that Act; and the Money-Lenders Act, 1911, 1 & 2 Geo. 5, c. 38, s. 2, provides (1) that no person may be registered as a moneylender under any name implying that he carries on the business of a banker; and (2) that any moneylender issuing any statement implying that he carries on a banking business shall be liable to a penalty as if he were unregistered.

As to frauds by bankers upon customers, see the Larceny Act, 1916, s. 20 (1) (iv). As to embezzlement by servants of the Bank of England or the Bank of Ireland, see s. 19 of that Act; and as to embezzlement by servants of other banks, see s. 17 (1) of the same Act.

Bank-book. A book, more generally known as a pass-book, in which a customer's account is kept for him by his banker. When such a book passes backwards and forwards between the bank and the customer it becomes evidence of an account stated (q.v.) and settled. The term " bank-book " is sometimes applied to what is more properly described as a banker's book (q.v.), that is to say, one of the books, kept in the bank, in which transactions with customers generally are recorded.

Bankers' books, Evidence of. The Bankers' Books Evidence Act, 1879, provides as follows:—a copy of any entry in a banker's

book is made *prima facie* evidence of the contents of the entry and of the matters recorded therein, the book being first proved to have been a banker's book at the time of the entry being made therein, the proof thereof being the affidavit or oral evidence of some partner in, or officer of, the bank (ss. 3, 4); and the copy being first proved to be correct, such latter proof being by the affidavit or oath of some person who has examined the copy with the entry (s. 5); and henceforward the bank cannot be compelled to produce its books in Court (s. 6); but the Court may order inspection thereof by any party to an action (s. 7), or to a prosecution or an arbitration (s. 10). Such order may be made either by the High Court of Justice (or any Judge thereof) or by the County Court Judge, or by a magistrate before whom criminal proceedings are being taken; and it may be made in England with reference to a bank in Scotland.

Entries in the books of the Bank of England may be proved by examined copies (q.v.) as well as in manner provided by the Act of 1879.

Bank Holidays. By the Bank Holidays Act, 1871, Easter Monday, the Monday in Whitsun week, the first Monday in August and the 26th December, if a week-day, and such other days as might be from time to time specially appointed by royal proclamation, were made holidays in and for Scotland; and for purposes connected with bills of exchange and promissory notes the days appointed for the business of all banks in England were to be holidays in Scotland. It will be noted that the Act did not affect the hours of business generally; but from the first there was a tendency to make each Bank Holiday a general public holiday. The Holidays Extension Act, 1875, provided that where the proper 26th December was a Sunday, the Monday observed by them. [illegible] should be a Bank Holiday, and made Bank Holidays public holidays in docks, customs houses, inland revenue offices and bonding warehouses. In all towns the fixed bank holidays are now universally observed as holidays by all the working classes.

Bank Notes. A bank note is a promissory note, made by a banker, payable on demand, and intended to be used as money. Bank of England notes are a legal tender in England for all sums over £5, except by the Bank or its branches (Bank of England Act, 1833, s. 6). In case a bank note is lost or stolen, or is otherwise improperly obtained, the Bank of England is bound to cash it for any holder who is not shown to have come by it dishonestly; but the Bank may delay payment of a stopped note for such reasonable time as is necessary for enquiries.

The issue in England of notes of less value than £5 is prohibited by the Bank Notes Act, 1826, s. 3; and the statute 9 Geo. 4, c. 65, provides that any person circulating in England any Irish or Scotch notes of less value than £5 shall be liable to a penalty of not less than £5 and not exceeding £20, recoverable summarily.

By the Country Bankers Act, 1826, any banking corporation (or partnership, although consisting of more than six members) was enabled to issue its own bills or notes, payable on demand or otherwise, at any places in England exceeding sixty-five miles from London; and this provision was continued by the Bank of England Act, 1833, which also provided that within London and the sixty-five miles' radius banks of deposit (but not of issue) might be established. Banking firms consisting of not more than six persons (Bank of England Act, 1833, s. 2) might be licensed to issue notes within sixty-five and beyond three miles from the City of London (Bank Notes Act, 1828, s. 1). The Bank of England had a monopoly of issuing notes within the three-mile radius (*ib.*, s. 1). By the Bank Charter Act, 1844, it was provided that in future it should not be lawful for any banker to draw, accept, or make, or issue any bill or [illegible] didate for whom bearer on demand, subject to [illegible] he puts the par[illegible], that any banker who, on [illegible] box [illegible] May, 1844, was lawfully issuing his own notes might continue to issue them, but if he once thereafter discontinued doing so, his right should be incapable of revival and subsequent exercise; and the amount of his note issue was not to be increased. The last-mentioned proviso applies only to bills or notes payable to bearer on demand. Under the statute 20 & 21 Vict. c. 49, s. 12, partnerships for banking might be constituted of any number of persons not exceeding ten, and this enactment, though repealed by the Companies Act, 1862, s. 205, was re-enacted by that section and again by s. 286 and Schedule 6, Part 2, of the Companies (Consolidation) Act, 1908, which replaces the Companies Act, 1862. Under s. 4 of the Companies Act, 1862, a partnership consisting of more than ten persons could be formed for the purpose of carrying on the business of banking if it were registered as a limited company; and that enactment, although repealed by s. 268 of the Companies (Consolidation) Act, 1908, has been re-enacted by s. 1 (1) of the latter Act. Under the Companies (Consolidation)

Act, 1908, s. 251, the liability of a bank of issue registered as a limited company is unlimited as regards its notes. See RE-ISSUABLE NOTES; and compare CURRENCY NOTES.

Bank of England. A corporation established by charter of the Crown, granted 27th July, 1694, under the authority of the Bank of England Act, 1694. The charter was continued by the Bank Charter Act, 1844, s. 27, which makes the charter determinable by twelve months' notice upon vote or resolution of the House of Commons, subject to repayment of all monies due from the public to the Bank. A supplemental charter to regulate the internal affairs of the Bank was granted by the Crown on 19th August, 1896, under the authority of the Bank Act, 1892, s. 7. The Bank assists the Government in all the great operations of finance, and is its appointed agent for managing the National Debt. Its advances to the Government are controlled by the Bank of England Act, 1819, which requires the previous authority of Parliament to all advances or loans; but that Act does not affect purchases by the Bank of lawfully authorized exchequer bills or bonds, or advances upon such bonds. In 1826 the Country Bankers Act, 1826, s. 15, authorized the establishment of branches of the Bank of England, but other sections of the same Act largely curtailed the monopoly previously possessed by the Bank (see the Bank of England Act, 1800, s. 15) The Bank, however, is still the only bank whose notes are legal tender, and it has the exclusive privilege of issuing notes in the City of London or within three miles thereof (Bank Notes Act, 1828, s. 1).

The Bank of England is required to purchase, at the rate of £3 17s. 9d. per ounce of standard gold, all gold bullion which may be offered to it, and to make payment in notes (Bank Charter Act, 1844, s. 4), and may require any such bullion to be melted and assayed at the expense of the person tendering it (*ib.*).

Bank Post-bill. A species of bill, payable generally seven days after date, which is issued by the Bank of England and the Bank of Ireland for the transmission of money by post.

Bankrupt. This is defined by the Bills of Exchange Act, 1882, s. 2, as meaning, "any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy." A receiving order does not divest a debtor of his property: it merely protects it. An adjudication is what vests the debtor's estate first in the Official Receiver, and subsequently in the trustee in bankruptcy, under the present law.

No person can be adjudged a bankrupt unless he, at the time when any act of bankruptcy (q.v.) was done or suffered by him, was (*a*) personally present in England or (*b*) ordinarily resided or had a place of residence in England or (*c*) was carrying on business in England either personally or by an agent or manager or (*d*) was a member of a firm or partnership carrying on business in England (Bankruptcy Act, 1914, s. 1 (2)). A foreigner can be made a bankrupt only if he comes within this section: but if he comes within this section only as regards presence or place of residence in England, but not otherwise, a bankruptcy petition cannot be presented against him, as will be seen from s. 4 (*d*) of the Act.

A married woman carrying on a trade or business, whether separately from her husband or not, can be made a bankrupt (*ib.*, s. 125 (1)) as if she were a *feme sole* (q.v.); and so also can the wife of a convict, or a convict himself.

Under the Bankruptcy Act, 1883, s. 32, anyone who is adjudged bankrupt is disqualified for being elected to or sitting or voting in either House of Parliament and for a number of public offices and bodies; and such disqualification exists until his adjudication is annulled or until he gets his discharge from the Court with a certificate that his bankruptcy was caused by misfortune without any misconduct by him. The Bankruptcy Act, 1890, s. 9, adds the county council to the list of bodies enumerated in s. 32 of the Act of 1883, and provides that no disqualification under either the Act of 1883 or that of 1890 shall exceed a period of five years from the date of any discharge from bankruptcy.

When a member of the House of Commons is adjudged bankrupt, his seat becomes vacant if the disqualification is not removed within six months from the date of the adjudication (Bankruptcy Act, 1883, s 33).

The Consolidated Regulations of the four Inns of Court provide that an undischarged bankrupt is not to be admitted as a student of any Inn, and that every student must, before his call to the Bar, make a declaration to the effect that he is (*inter alia*) not an undischarged bankrupt; but bankruptcy after call does not prevent a barrister from practising.

Under the Solicitors Act, 1888, s. 16, the Solicitors Act, 1906, s. 1, and the Solicitors Act, 1922, s. 6, the registrar of solicitors may

in his discretion refuse to issue a certificate to any solicitor who is an undischarged bankrupt. Such refusal prevents the solicitor from practising.

See UNDISCHARGED BANKRUPT.

Bankruptcy. I. is the name given to a variety of judicial or quasi-judicial proceedings, having for their main object the distribution of the property of an insolvent person among his creditors. Formerly, the term "bankruptcy" was also applied to companies (7 & 8 Vict. c. 111): the process of administering the property of an insolvent company is now called winding-up (q.v.). The law of bankruptcy is founded on the principle that when a man becomes insolvent the property then remaining to him rightfully belongs to his creditors and ought to be distributed rateably among them towards satisfaction of their claims, the debtor himself being released from future liability in respect of his debts upon giving all the aid in his power towards the realisation and distribution of his estate for the benefit of his creditors and fulfilling the other conditions prescribed by the law for his discharge. This is effected in two manners, either by bankruptcy, in the strict sense of the word (*infra*), or by arrangements between the insolvent and his creditors, which form part of the law of bankruptcy, in the wide sense of the word. (See ARRANGEMENT.)

II. Bankruptcy, in the strict sense, denotes proceedings taken to make a person bankrupt, and to administer his property for the benefit of his creditors. A bankruptcy consists of the commission of an act of bankruptcy (q.v.) followed by an adjudication: but, as regards the title of a trustee in bankruptcy to a debtor's property, the bankruptcy of the debtor commences at an earlier date, as to which see the Bankruptcy Act, 1914, s. 37 (1).

The law as to bankruptcy is now to be found in the Bankruptcy Act, 1914, which (see s. 168 (2)) applies to proceedings under the Bankruptcy Acts, 1883-1913, as if they had been commenced under it; but s. 131 provides that the enactments set out in Sched. IV. to the Act shall apply to proceedings in bankruptcy which had been commenced before 1884.

Originally the bankruptcy law was a branch of criminal law, being directed solely to the object of preventing fraudulent traders from escaping from their creditors. But by statutes passed in Queen Anne's reign provision was made for relieving bankrupts from their debts; and by the Bankruptcy Act, 1861, the distinction between traders and non-traders, who had hitherto not been subject to the bankruptcy law, was to that extent abolished. The distinction between bankruptcy and insolvency still exists on the Continent. (See INSOLVENCY; BANKRUPT; BANKRUPTCY COURTS; BANKRUPTCY NOTICE; TRADER; DEBTOR; CREDITOR; MUTUAL CREDITS; PROTECTED TRANSACTIONS; REPUTED OWNERSHIP; CERTIFICATE; RECEIVING ORDER; PETITION; DISCHARGE; SETTLEMENT.)

Bankruptcy Courts. The Courts having jurisdiction in bankruptcy are the High Court and the County Courts other than those excluded by order of the Lord Chancellor (Bankruptcy Act, 1914, s. 96). The jurisdiction of the High Court is exercised through one of the Judges thereof specially assigned by the Lord Chancellor (s. 97). The petition is to be presented in the High Court only if the debtor has resided or carried on business within the London Bankruptcy District for the greater part of the six months preceding the presentation of the petition, or if he is not resident in England, or if the petitioning creditor cannot ascertain his residence: in other cases the petition is to be presented to the County Court of the district in which the debtor has resided or carried on business for the longest period during such six months (s. 98). The London Bankruptcy District includes the City of London and the Liberties thereof and the County Court districts of Bloomsbury, Bow, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster and Whitechapel (s. 99, Sched. III.) But the Judge of the High Court can, for cause shown, transfer any bankruptcy from the County Court to the High Court or *vice versa* (Bankruptcy Rules, 1915, r. 18); and a County Court Judge can, for cause shown, transfer a bankruptcy from his Court to another County Court (r. 19). See LONDON COURT OF BANKRUPTCY.

Bankruptcy Notice. This is a notice, forms of which are given in the APPENDIX OF FORMS (Nos. 6 and 7) annexed to the Bankruptcy Rules, 1915. Such notice may be issued by a person who has obtained in any Court a final judgment or order for any amount, whether in the High Court or in the County Court; and non-compliance with the requirements of the notice is an act of bankruptcy (q.v.) (Bankruptcy Act, 1914, s. 1 (1) (g), s. 2). This is the most common foundation of bankruptcy. But a receiving order (q.v.) will not be made on the notice unless a bankruptcy petition be presented by a creditor or by creditors whose debt, or the aggregate of whose debts, amounts to £50 (s. 4 (1) (*a*)).

Banneret, Knight. These were knights (q.v.) created on the field of battle, and stated to be called bannerets because the points were cut off their pennons so as to turn the pennon into a banner. The higher class were created by the King or the Prince of Wales, if either of them was on the field; the lower class were those created by the commander of the army, if neither the King nor the Prince was present. Knights banneret were sometimes created by letters patent: William De La Pole was so made a banneret in 1339. No bannerets seem to have been created since the year 1500.

Bannimus. Formerly this meant the exhibition in some public place of the sentence of expulsion of a member of the University of Oxford. The term was not, however, known to the law.

Bannire; Banniare. To summon before a Court, where the summons was from the Court and not from an adversary (Leg. Hen. I., c. 10).

Bannire ad placita (or **ad moliendum**). To summon tenants to the lord's court or to grind corn at his mill. The word *bannire* is one of the derivatives of *bannus*, or ban, which meant, amongst other things, a summons.

Bannitus. In the time of Edward III. this meant an outlaw or a banished man.

Banns of Marriage. A proclamation in church of an intended marriage. The word "banns" is derived from *bannus* or *bannum*, which anciently was used as meaning a proclamation. The Marriage Act, 1823, contains the existing law as to banns of marriage. They are, in the normal course, the preliminary to marriage in churches or chapels of the Church of England; but the Archbishop of Canterbury may by special licence, and any archbishop or bishop may by ordinary licence, dispense with some or all of the three publications required by statute, or the superintendent registrar's certificate may be substituted for them. See LICENCE.

Bannus. Anciently this meant a summons issued by a Court.

Baptism. Article 25 of the Thirty-nine Articles declares: "There are two Sacraments ordained by Christ our Lord in the Gospel, that is to say, baptism and the supper of the Lord." Article 27 directs that baptism shall take place while children are young. Canon 81 of 1603 directs that there shall be in each church or chapel a stone font in which alone baptisms are to take place. The rubric directs that for every male child there shall be two godfathers and one godmother, and for every female child two godmothers and one godfather. Under Canon 29 no parent may be godfather for his own child and all godparents must be communicants. The rubric directs that the clergyman shall dip the child in the water "discreetly and warily"; but if the godparents certify—as they are now always taken to do—that the child is weak, then water is merely poured upon it.

Baptism by a clergyman may, in case of necessity, take place in a private house; and, in case of emergency, a layman or a woman may baptize: but the normal and proper place and time of baptism is in a church or chapel on a Sunday or holy day.

The Baptismal Fees Abolition Act, 1872, provides that no fee may be demanded for the celebration of baptism or the registration thereof.

As to the registration of baptism, see PARISH REGISTER.

Bar. A bar is a partition across a Court of justice. In the Houses of Lords and Commons, the bar forms the boundary of the House, and therefore all persons, not being members, who wish to address the House, or are summoned to it, appear at the bar for that purpose; thus, in arguing appeals in the House of Lords, the counsel stand at the bar.

In the ordinary Court, the bar is a more or less imaginary barrier separating the bench and the front row of counsel's seats from the rest of the Court; only King's counsel and barristers holding patents of precedence are allowed within the bar, together with solicitors (as officers of the Court) and parties litigant who appear in person, while junior or utter barristers and the general public remain without the bar.

Hence, "bar" has acquired the secondary sense of "Court" in such phrases as the "case at bar," "disclaimer at the bar," meaning "in Court," and the tertiary sense of the whole body or profession of barristers. The operation of being admitted to practise as an utter barrister is described as being "called to the bar," while King's counsel are called within the bar, that is, invited by the Judges to take their seat in the front row. The one certificated conveyancer known to still survive is said to be below the bar. (See BARRISTER.)

A trial at bar is a trial by a jury before a full Court (*i.e.* three or four Judges), instead of before a single Judge at *nisi prius*. Trial at bar was originally the normal mode of trial; but as it made it necessary to bring up the jury and witnesses from the *locus in quo* to Westminster, the practice of trial at *nisi prius*

was introduced. (See NISI PRIUS.) Trials at bar in civil cases have long been practically obsolete; but they are still held occasionally in criminal cases of importance.

Bar also signifies a metaphorical barrier or obstacle. Thus, in the old law, a fine with proclamations levied by a tenant in tail was said to be a bar to the estate tail, because it took away the right of the issue in tail. (See FINE.) So a judgment is a bar to another action for the same right, and a debt or right is barred by the Statutes of Limitation when the time for the enforcing it has gone by; this is sometimes called an absolute bar, as opposed to a presumptive bar, which arises from *laches* or lapse of time otherwise than under the statutes. In pleading, anything is a bar which is an answer to the plaintiff's claim; as to pleas in bar, see PLEA.

In the old books "bar" frequently means a "plea in bar," and is so called "because it barreth the plaintiff of his action." Bars in this sense were formerly divisible into many kinds, *e.g.* bars to common intent, bars to special intent, bars at large, bars material, etc., but these are all now obsolete.

Bar at Large. See COMMON BAR.

Barbed Wire. If an occupier of land erects barbed fencing on his own land, but not so as to fence it from adjoining land or from a highway, he will not be liable for damage resulting therefrom. If, however, he erects the fencing so that damage may result thereby to an adjoining owner or to persons or animals using a highway, he is liable for such damage as may result therefrom to such adjoining owner or to persons or animals lawfully using such highway. A barbed-wire fence adjoining a highway may be a public nuisance and indictable as such. But indictment is a cumbrous and expensive remedy; and the Barbed Wire Act, 1893, provides that an order for the removal of barbed wire which is a nuisance to a highway may be obtained from a Court of summary jurisdiction. Barbed wire is a nuisance to a highway when it is dangerous to persons or animals lawfully using such highway (*ib.*, s. 2); and a highway means any way along which the public have a right to pass, and includes not only a highroad but also a footpath, a bridle-path or a driftway (a way for cattle), and need not necessarily be a thoroughfare.

"Barbers and Chirurgians." The statute 32 Hen. 8, c. 42, entitled "Concerning Barbers and Chirurgians," after reciting that there were then in the City of London two distinct companies of surgeons exercising the science of surgery, the one company being called the Barbers of London and the other the Surgeons of London, and that while the Barbers had been incorporated by letters patent under the Great Seal in 1462, the Surgeons had never been incorporated, proceeded to enact that the two companies should be formed into one company of Barbers and Surgeons, and provided that barbers should not within one mile of the City of London practise "surgery, letting of blood, or any other thing belonging to surgery, drawing of teeth only excepted," and that, on the other hand, surgeons within the same radius should not "exercise the feat or craft of barbary or shaving" and should have shop signs. By letters patent which passed the Great Seal in 1629, it was, amongst other things, provided that two of the governors of the company were to be surgeons and that ten freemen of the company were to be appointed examiners in surgery and to be empowered to issue certificates, without which no one could practise as a surgeon within seven miles of the City of London. In 1745 the statute 18 Geo. 2, c. 15, after a preamble which recited the matters mentioned above, and which also recited that the surgeons had found "their union with the barbers inconvenient in many respects and in no degree conducive to the progress or improvement of the art of surgery," enacted that as from 1st June, 1745, the company should be dissolved and that such of its members as were surgeons should form a body corporate called "The Master Governors and Commonalty of the Art and Science of Surgeons." That body is now represented by the Royal College of Surgeons.

Bar Committee. In December, 1883, a body known as the Bar Committee, consisting of forty-eight barristers, was elected at a general meeting of the bar "to collect and express the opinions of the members of the bar on matters affecting the profession and to take such action thereon as may be expedient." This body acted until 1894, when it was replaced by the Bar Council (q.v.). The expenses of the Bar Committee were defrayed out of voluntary contributions. It laid the foundations of the code of professional etiquette which, until 1918, used to appear in the *Annual Practice*, Pt. II.; and the rules as to retainers which form part of that code are it's work.

Bar Council. This is the popular description of the "General Council of the Bar," which in 1894 replaced the Bar Committee without any statutory sanction. The Bar

Council consists of (1) *Ex-officio* members, namely, the Law Officers for the time being and former Law Officers while in actual practice at the bar; (2) elected members, namely, forty-eight practising barristers, of whom not less than twelve must be seniors and not less than twenty-four must be juniors, and not less than six must be of at least ten years' standing at the bar. (3) Additional members, namely, such practising barristers, not exceeding six, as the Council may appoint. The rules provide also for nominated members, namely, sixteen practising barristers, of whom four may be appointed by the Masters of the Bench of each of the four Inns of Court: but no such members have hitherto been nominated.

The Council is supported out of funds (about £1,000 a year) contributed by the four Inns of Court.

The Council answers questions and makes rules as to the etiquette and practice of the bar: but these rules are made without statutory sanction and bind no one outside the profession. It has no disciplinary power: but it can and does from time to time bring instances of misconduct under the notice of the benchers of the Inn of which the barrister implicated is a member. The Bar Council is recognised by the Judges and by the Inns of Court as representative of the bar; and it has also come to be recognised by the Crown and by Parliament. Thus the charter granted by the Crown to the University of Liverpool in 1903 provides that one member of the governing body of the university shall be nominated by the Bar Council; and the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23, s. 18 (2)), provided that the Council should appoint one member of the committee with the advice and assistance whereof rules were to be made for the purposes of that Act.

Bar Fee. Down to 1815, when proceedings against persons charged with any indictable offence resulted otherwise than in a verdict of guilty, such persons could obtain their discharge only on payment of certain fees (known as bar fees) for such discharge, to "clerks of assize, clerks of the peace, clerks of the court or their deputies or other officers of the courts of assize or sessions" (55 Geo. 3, c. 50, s. 4). But in 1815 it was enacted that such persons should be discharged without payment of any such fee (*ib.*); such fees were abolished (*ib.*, s. 5); and any such officer exacting such fees was declared to be guilty of misdemeanour and to be incapable of holding his office (*ib.*, s. 9). But this Act had not dealt with other fees exacted by such officers from such persons as are therein mentioned "for their appearance to the indictment or information, or for allowing them to plead thereto, or for recording their appearance or plea, or for discharging any recognizance taken from any such persons or any surety or sureties for them" (Gaol Fees Abolition Act, 1845), and it was not until 1845 that it was made unlawful to demand or take such other fees (*ib.*). The fees dealt with in these two Acts were known as bar fees and had been payable from time immemorial.

Cowel, writing in 1607, states on the authority of Crompton (*Just. of Peace*, fol. 158), that a fee of twenty pence payable to the sheriff by anyone acquitted of felony was known as a bar fee. There is no statutory authority for such a fee and any sheriff or officer of a sheriff taking or demanding it would therefore now be liable to the penalties provided by the Sheriffs Act, 1887, s. 29.

Bare Trustee. A person who holds trust property in trust for the absolute benefit and at the absolute disposal of other persons who are of full age and *sui juris* (q.v.) in respect of it, and who has himself no present beneficial interest in it, and no duties to perform in respect of it except to convey or transfer it to persons entitled to hold it. (Halsbury, Vol. 24, p. 86.)

Bargain and Sale. At common law a bargain and sale was a contract, whether oral or in writing, for the sale of any estate or interest in land, or of chattels, followed by payment of the agreed price. The expression is commonly applied only to bargains and sales of estates or interests in land. Before the enactment in 1536 of the Statute of Uses (27 Hen. 8, c. 10) the Court of Chancery held that as soon as a bargain and sale of land had been completed, the bargainor or vendor was seised of (or held) the land to the use (that is to say, for the benefit) of the bargainee or purchaser, so that the bargainor became a trustee for the bargainee. The Statute of Uses executed the use in favour of the bargainee, that is to say, gave him the same estate or interest in the land as the bargainor had before the bargain and sale. The effect of this was that land might be conveyed secretly. To prevent that result, the Statute of Enrolments (27 Hen. 8, c. 16) was passed almost immediately after the Statute of Uses, and enacted that no bargain and sale of any freehold interest in lands should be effectual unless it were made by deed and unless such deed were enrolled within six months of its date in one of the Superior Courts at Westminster or elsewhere

as is provided in the Act. Such enrolment (or putting of the deed on the records of the court) etc., made the deed open to inspection; and this was an unpopular result. But the Statute of Enrolments applied only to freeholds. There was nothing in it to require the enrolment of any deed effecting a bargain and sale of an estate or interest less than freehold. So the method of conveyance by lease and release (q.v.) became general; and bargain and sale became obsolete as a means of conveying land, except in the case of executors selling copyholds under a direction contained in a will and of a freeholder mortgaging for a term of years, in both of which cases bargain and sale is still the appropriate method of conveyance.

Since the enactment in 1677 of the Statute of Frauds (29 Car. 2, c. 3) it has, of course, been necessary that the bargain or agreement forming part of a bargain and sale of lands shall be in writing.

Bargainor; Bargainee. See BARGAIN AND SALE.

Barleycorn. An old customary measure of length: it was one-third of an inch.

Barmaster. An officer of the Barmote Court (q.v.), who may appoint a deputy, and who is himself appointed by letters patent under the seal of the Duchy of Lancaster. He has various administrative duties. He has to mark out "meers," which correspond more or less to what in modern mining phraseology are called claims. He has to measure all ore before it can be disposed of or sold. And he has to make returns of the quantity of ore produced in mines employing not more than twelve persons underground.

Barmote Court. Courts known as the Great Barmote Courts and the Small Barmote Courts administer the mineral laws and customs relating to lead mining in the districts of Derbyshire known respectively as the King's Field or Fee of High Peak and as the King's Field in the soke and wapentake of Winksworth. These Courts date from time immemorial. The Barmote Courts of High Peak are now regulated by the High Peak Mining Customs and Mineral Courts Act, 1851, and by rules (see S. R. & O. Rev. 1904, VI. Inferior Courts, E., p. 47) made 30th May, 1859, in pursuance of that Act; and those of Winksworth are now regulated by the Derbyshire Mining Customs and Mineral Courts Act, 1852 (15 & 16 Vict. c. clxiii.). The judge for each district is termed the steward, who must be a barrister of five years' standing or a solicitor of seven years' standing. The officers are the barmaster and the deputy barmaster. The Great Barmote sits, or may sit, twice a year, and the Small Barmote sits as it may be required.

The business transacted before the Great Barmote is the swearing of what is known, for the purposes of the Acts above mentioned, as a grand jury and for bills and cross-bills of directions. Bills and cross-bills of directions are forms of actions as to mining rights. One of the functions of the grand jury is to view lead mines which are in litigation before the Court.

The Small Barmote has jurisdiction—which is not exclusive—as regards the lead mines, in title, trespass and debt.

Barnard's Act, Sir John. The popular title of the Stock Jobbing Act (q.v.).

Barnard's Inn. See INNS OF CHANCERY.

Baron. This in the old books, means husband. Thus "baron and feme" meant husband and wife.

Anciently, barons of London and barons of the Cinque Ports meant merely freemen of London or of the Cinque Ports (q.v.). Subsequently (see COMBARONES) a baron of the Cinque Ports came to mean a member of Parliament for any of the Cinque Ports.

Before the Judicature Acts judges of the Court of Exchequer were called barons and the chief judge of that Court was styled the Lord Chief Baron of the Exchequer. The judges who held those titles at the time of the enactment of the Judicature Acts continued to retain them until they ceased to hold office: but, as they dropped out, the titles ceased to be used. These barons of the Court of Exchequer were the lineal descendants of the barons of the Exchequer (see EXCHEQUER), who were entrusted with the collection of the royal revenue at a time before the Court of Exchequer had assumed its purely judicial form. Alexander de Swereforde (see RED BOOK OF THE EXCHEQUER) was one of these earlier barons. As to barons in the peerage, see BARONY.

Baron of the Coif. This expression is used in the statute 19 & 20 Vict. c. 86, which was passed in 1856 to abolish the office of cursitor baron of the Exchequer. It means a baron of the old Court of Exchequer: he had to be a serjeant-at-law. See COIF; EXCHEQUER; SERJEANT.

Baronet. A hereditary dignity—which is practically an hereditary knighthood—entitling the holder to be styled Sir John Smith (or as the case may be) and his wife to be styled Lady Smith, or, more formally, Dame Smith. Baronets originated in 1611, when James I.

gave the dignity to any knight or esquire with land worth £1,000 a year who was of good repute and was prepared to pay £1,080 to the Exchequer in three annual instalments. James introduced baronets into Ireland in 1619. Charles I. introduced the order into Scotland in 1625, the Scotch baronets being at first termed baronets of Nova Scotia, in connection with the colonization of which they were created. Baronets created in England and Scotland since 1707 are baronets of Great Britain; and all baronets created since 1801 are baronets of the United Kingdom.

Down to the end of the reign of Charles I., the limitation was usually to the heirs male of the grantee; but since then, the limitation has been to heirs male of his body, except in a few cases where the limitation has been to, for instance, a nephew of the grantee and then to the heirs of the body of the nephew; and baronetcies never descend, like some peerages, in the female line. A baronetcy has only once been conferred on a woman: but there have been several cases in which a widow has been given the rank and title of a baronet's widow.

No privilege or duty has ever attached to the dignity; and until 1910 there was no official register of baronets. But under a Royal Warrant of February 8, 1910, a registrar has been appointed, and no person will in future be officially described as a baronet unless his name appears on the roll of baronets kept by the registrar.

Barony. This is the rank of a baron, who is of the lowest rank in the peerage.

A writ of summons to Parliament, followed by an actual sitting therein, created a barony, and this was the only means of creating a barony used down to 1388. In that year a barony was for the first time created by letters patent; and that is now the only method employed.

Baronies created by writ descend to the heirs of the original baron, and are consequently occasionally held by females. Baronies by letters patent descend in accordance with the limitation set forth in the patent, which makes them descendible usually to the heirs male of the body of the grantee but sometimes to a near relative, such as a daughter, nephew or brother of the grantee, and then to the heirs male of the body of such daughter, nephew or brother.

Baronies were occasionally also created by charter or by Act of Parliament. See HONOURABLE; PEERAGE.

Barratry. This has, in English law, three distinct meanings: (1) In ecclesiastical law it means simony (q.v.). (2) In the law of merchant shipping, it means certain forms of misconduct and fraud, as to which see BARRATRY (IN MARINE INSURANCE). (3) At common law it means the offence committed by a common barrator, that is to say, one who habitually moves, excites or maintains suits or quarrels, whether at law or otherwise.

Barratry, in the third sense, is a misdemeanour at common law. Indictments for the offence are almost obsolete. See MAINTENANCE.

Barratry (in Marine Insurance). This, which is also known as "barratry of masters and mariners," includes every wrongful act wilfully committed by the master or crew of a ship to the prejudice of the owner or, as the case may be, the charterer. Running away with the ship, sinking her, deserting her or stealing the cargo will clearly be barratry: and so also will many other acts if they are done wilfully and are illegal and cause loss to the owner or charterer; but, in English law, no mere negligence or default, no matter what loss may be caused thereby, will constitute barratry. Barratry is one of the perils of the sea generally insured against in policies of marine insurance, and a shipowner is commonly exempt under the bill of lading from liability to the charterer in respect of any act of barratry.

Barrier. This, in the law of coal mines, is a wall of coal left between two mines. In the absence of an agreement, easement or custom to the contrary, every mine owner may work up to the boundary of his land, although his doing so may cause injury to his neighbour, *e.g.* by letting water into his neighbour's mine; but he is liable for injury caused by negligence or malice. In practice, it is usual for a mine owner to work to the boundary on the dip of the coal bed, and to leave a barrier of his own mineral on the rise, so as to prevent the water of the adjacent mine on a higher level from flooding his mine. If the "upper owner" (that is, the owner of the adjacent mine on the rise) trespasses on the barrier so as to let the water through, he will be liable not only for the trespass, but also for the consequential injury. See also BOUNDARIES.

Barrister. This means a member of one of the four Inns of Court (q.v.) who has been called to the bar by his Inn. That makes him a barrister, and gives him, along with other barristers, the exclusive right of audience in the High Court. His professional conduct is under the control of the benchers of his Inn. His fees are an *honorarium*, and no action lies

to recover them, nor can any security be taken for them; but, on the other hand, he is not liable for negligence or non-attendance. He enjoys numerous privileges (which, however, he is assumed to exercise only for the benefit of his client), *e.g.*, he may compromise the case; nor is he exposed to any action for libel or slander in consequence of words written or spoken by him in the conduct of his case; but he is liable to be punished for contempt of Court even for words professedly spoken in the discharge of his functions as advocate, and if he is guilty of gross misconduct, whether by words or otherwise, as an advocate, he can be disbarred, or removed from the list of barristers by the Benchers (q.v.) of his Inn, who can also disbar for conduct otherwise than as an advocate which in their opinion makes him unfit to be a barrister. He is privileged from arrest on civil process while attending Court or going circuit. See APPRENTICII AD LEGEM; BANKRUPTCY; BAR; DRAFTSMAN.

Barton. In a private Act of 1548 (2 & 3 Edw. 6, c. 12), "demeane or barton lands" are treated as synonymous terms: but the word "barton" may mean also the manor-house itself, or outhouses or foldyards.

Bas Chevaliers. "Low or inferior knights—as distinguished from banerets, the chief or superior knights. Hence we now call our simple knights, Knights Bachelors, *i.e.*, Bas Chevaliers." So wrote Jacob in 1739, on the authority of the Glossary to Kennett's Parochial Antiquities, published in 1693. But "bachelor" was originally written "bacheler"; *bacheler* is old French; and *bacheler* is derived from the Low Latin *baccalaurius*. Bishop Kennett apparently knew none of these things. His *bas chevalier* is a purely fictitious person, invented to afford a plausible source for the word "bachelor."

Base Courts. Under this description came the various inferior courts, not being courts of record, which formerly exercised jurisdiction. The court baron was the most important. They had been obsolescent even before the enactment of the County Courts Act, 1867, s. 28, which provided that no action which could be brought in the County Court should be brought in any inferior court not being a court of record.

Base Estate. The interest in lands of a tenant who held by base tenure (q.v.).

Base Fee. A base or qualified fee is an estate which has some qualification subjoined thereto, and which must cease or be determined whenever such qualification is at an end. As in the case of a grant to A. and his heirs, "tenants of the manor of Dale"; in this instance, whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated. So when Henry VI. granted to John Talbot, "lord of the manor of Kingston-Lisle, in Berks," that he and his heirs, "lords of the said manor," should be peers of the realm by the title of Barons of Lisle; here John Talbot had a base or qualified fee in that dignity, and the instant he or his heirs quitted the seigniory of that manor, the dignity was at an end. These estates are fees, because it is possible that they may endure for ever in a man and his heirs; yet as that duration depends on certain collateral circumstances which qualify and debase the purity of the donation, it is therefore called a base or qualified fee. In a more limited sense, a base fee is used to denote a fee simple derived out of a fee tail, which has been barred by one whose power extends only to bar his own issue, heirs in tail; in this case, so long as such heirs in tail or their issue endure, the fee simple endures, but it determines when they become extinct. A base fee, in the more limited sense, is most commonly created where a tenant in tail in remainder executes and enrols a disentailing deed but does not get the consent thereto of the tenant for life in possession, who is known as the protector of the settlement.

Base Tenure. This anciently meant a tenure under which land was held by base services, as to which see SERVICES.

Basel. Hollingshed, writing in 1577, states that in 1158 Henry II. abrogated "certaine peeces called basels." Upon the strength of this the compilers of legal dictionaries have described the basel as a coin. As a matter of fact, the word seems to have been an error for "baseling," or piece of base coin.

Basket Tenure. A tenure such as that mentioned under CANESTELLUS (q.v.).

Bass's Act. A popular title of the Metropolitan Police Act, 1864. See STREET MUSICIAN.

Bastard. This means primarily a child born out of wedlock. He is not legitimated by the subsequent marriage of his parents (see ANTE-NATI). Upon an order of affiliation (q.v.) the putative father becomes liable to a limited extent to support his child; but otherwise the mother must support it until it attains the age of sixteen years or, if a female, until it marries under that age (Poor Law Amendment Act, 1834, s. 71). The custody

of the child belongs also of right to the mother, notwithstanding the father is able and willing to maintain it better, though it seems that the wishes of the child itself will be consulted; but after the mother's death the father is entitled to the custody of the child.

A child born under the cloak of wedlock also is a bastard, notwithstanding the maxim *Pater est quem nuptiae demonstrant*, if it is proved that the husband of the mother had no access or possibility of access to her during the required period of generation.

At common law a bastard takes no property through his parents, whether as heir-at-law or as next-of-kin. As regards real property, there was formerly an exception in the case of a *bastard eigné* (see MULIER): and with regard to personal property, where a man domiciled in England (but originally of a domicile which permits legitimation of *ante-nati* (q.v.) dies leaving a son who is a bastard according to English law, such son, if he had been legitimated *per subsequens matrimonium* prior to the acquisition of an English domicile by the father, will take as next-of-kin of the father.

No one other than a legitimate descendant of a bastard can take as heir-at-law or next-of-kin of the bastard.

A bastard has no surname except such as he acquires by reputation or except such as he chooses to adopt (see SURNAME). He has such Christian name as he may be baptised or registered by: but no person may be registered as his father save at the joint request of such person and of the mother (Births and Deaths Registration Act, 1874, s. 7).

A bastard cannot be compelled to support either of his parents.

The fact that a bastard has relations is recognised by the law as to marriage, which prohibits marriage between a bastard and anyone with whom marriage would be unlawful if he had been born in wedlock. The fact is also recognised by the Workmen's Compensation Act, 1906, s. 13, which gives him the same right of compensation in respect of the death of a parent or grandparent, and gives a parent or grandparent the same right of compensation in respect of his death, as would exist if he were not a bastard. The Punishment of Incest Act, 1908, puts a bastard on the same footing, for the purposes of that Act, as a person who is born in wedlock. Any such statutory recognition of the connection of a bastard with his relations is quite modern. There is no trace of it in the Fatal Accidents Act, 1846 (Lord Campbell's Act).

Bastardy Bond. Under the statute 18 Eliz. c 3, a justice, upon the oath of a woman with child of a bastard, could require the reputed father of such bastard to enter into a recognizance (popularly known as a bastardy bond) with sufficient securities to indemnify the parish against the cost of maintaining such bastard, and could commit him in default of his so doing. The Poor Law Amendment Act, 1834, s. 70, abolished this procedure.

Baston. Used formerly as meaning a warden of the Fleet or of the Marshalsea and possibly of other prisons. The practice, which was stopped in the case of the Marshalsea by the decision of Coke, reported at 2 Bulst. 148 (see DELICATUS DEBITOR, ETC.), had been expressly prohibited as regards the Fleet by the statute 1 Rich. 2, c. 12.

Bates's Case. Decided that a Turkey merchant importing currants into England from the Levant was liable to a tax or imposition laid on by the King (James I.) without the sanction of Parliament, the restraints of the early statutes and ordinances on the King's taxation not extending to foreign commerce. This case is sometimes called the *Case of Impositions*. The Bill of Rights (q.v.) overruled the decision.

Bath, Order of the. In the Middle Ages knights were created either by mere accolade (q.v.) or by an elaborate ceremonial of which bathing formed part. Those made by accolade were called Knights of the Sword. The others were called Knights of the Bath. Knights of the Bath are stated to have been made for the first time in 1399 and for the last time in 1661. When George II. wished to found a new order of knighthood in 1725, it was decided to call the new order "The Most Honourable Order of the Bath." The mediaeval Knights of the Bath had never been an order: but the new order of 1725 purported to be a revival of a formerly existing Order of the Bath. Down to 1847 it was purely military; but in that year civil members were admitted. There are now normally fifty military, and twenty civil, Knights Grand Cross (G.C.B.); one hundred and twenty-three military, and eighty civil, Knights Commanders (K.C.B.); and six hundred and ninety military, and two hundred and fifty civil, Companions (C.B.). There are also honorary members of the several classes: and there is power to increase the numbers in each class.

The Bath ranks as the fourth of the Orders. See KNIGHTHOOD, ORDERS OF.

Bathing. The public generally has no right, at common law or otherwise, to use the foreshore (q.v.) for the purpose of bathing there-

from in the sea, whether the foreshore be the property of the Crown or of private persons: but such right may be acquired by prescription (q.v.) for the owners or occupiers of particular houses or for the inhabitants of particular areas. But at common law it is a misdemeanour to bathe unclothed near or in sight of any place along which the public habitually pass as of right or by permission; and no right so to bathe can be acquired in any way. Regulations as to bathing, whether in the sea or in inland waters, may be made by local authorities under the Town Police Clauses Act, 1847, s. 69, and under the Public Health Acts Amendment Act, 1907, s. 92.

Baths and Washhouses. The Baths and Washhouses Acts, 1846 to 1899 (in connection with which see the Local Authorities (Treasury Powers) Act, 1906), enable local authorities to provide public baths and washhouses. Of this group of Acts, the 41 & 42 Vict. c. 14, s. 2, authorises the construction of swimming-baths, and s. 5 thereof authorises the use of such baths for purposes of healthful recreation, which, under others of the Acts (62 & 63 Vict. c. 29, as regards places other than London, and 59 & 60 Vict. c. 59 as regards London), may include music and dancing if a licence therefor is granted and if no money be taken at the door. These Acts are adoptive. See ADOPTIVE ACT.

Battery. See ASSAULT.

Battle, Trial by. In the criminal law this was the most common means employed for a couple of centuries after 1066 to bring a felon to justice. See APPEAL OF FELONY; COMPURGATION; ORDEAL.

As to trial by battle in writs of right, see ASSIZE, GRAND.

Trial by battle also applied to civil proceedings in the action of debt down, in practice, to about 1250. See COMPURGATION.

All trial by battle was abolished by the statute 59 Geo. 3, c. 46. See APPEAL OF FELONY.

Bawdy House. See BROTHEL.

Bazaar. The Shops Act, 1912, s. 19 (2), provides that nothing in that Act shall apply to "any bazaar or sale of work for charitable or other purposes from which no private profit is derived."

Beach. See FORESHORE.

Beacon; Beaconage. After reciting that "by the destroyeng and taking awaye of certain steeples woods and other marks standing upon the mayne shores adjoinyng to sea costes . . . as beakons and markes of auncyent time accustomed for seafaring men" many ships had been lost, the statute 8 Eliz. c. 13 empowered the Trinity House to erect such "beakons markes and signes for the sea" as they deemed necessary, and enacted that "no steples trees or other thinges" then "standing as beakons or markes for the sea" should be removed if required by royal letters patent to be preserved.

A beacon was, in fact, originally anything used as a leading mark but not erected in order that it might be so used, and subsequently it was a structure erected for the purpose of being used as a leading mark. The first lighthouse was erected at Caister, in Norfolk, in 1600 under the 8 Eliz. c. 13, it being held that the Act extended to lighthouses.

"Beacon" also anciently meant a pile of readily inflammable material, used as a means of giving notice of invasion; and sums of money levied for the maintenance of such beacons were known as beaconage.

Beadle. A common law parish officer whose office dates from time immemorial. He is chosen by, and holds office at the pleasure of, the vestry; he gives notice to parishioners of the meetings of the vestry and attends the meetings; and he generally summons jurors for coroners' inquests. In some of the wards of the City of London he is sworn in as a constable: but except in such case he has none of the powers of a constable.

A servant employed to maintain order in a church is also known as a beadle; but this is what may be described as a merely honorary title.

Bearer. The Bills of Exchange Act, 1882, s. 2, enacts that "'bearer' means the person in possession of a bill or note payable to bearer," and that "'bill' means bill of exchange and 'note' means promissory note." When the benefit of a security or document of title can be claimed by any person who presents it for that purpose, it is said to be a document to bearer. For instance, if a cheque is drawn thus: "pay the bearer," or "pay A. B. or bearer," or "pay cash or bearer," etc., the banker may pay it to anyone who presents it, unless its negotiability is restrained. See CHEQUE.

"Bearer" is used in the statute 4 Edw. 3, c. 11, with apparently much the same meaning as maintenor (q.v.).

Beasts. According to Manwood, the buck, doe, fox, marten and roe were "beasts of chase," the hart, hind, boar and wolf were "beasts of the forest" or "beasts of venary," and the hare, coney, pheasant and partridge were "beasts and fowls of the warren."

Beatus ille qui multos attornatos dociles habet (Blessed is he who hath many tame attornies—that is to say, many solicitors—each of whom he leads, as it were, upon a little string). The maxim, which is of obscure origin, applies more especially to members of the Bar.

Beau-pleader. The Statute of Marlbridge, 52 Hen. 3, c. 11, enacted that neither in the circuit of justices, nor in counties, hundreds or courts baron, should any fine be taken for fair pleading, that is to say, as is explained in Fitzherbert *Nat. Brev.*, fol. 270, for not pleading fairly. The writ of beau-pleader, prohibiting the demanding of any such fine, lay to the sheriff upon the statute. See FINE NON CAPIENDO PRO PULCHRE PLACITANDO.

Bed (of river). The bed of a tidal river is presumptively the property of the Crown up to the point reached by the tide. As to a non-tidal river, see AD MEDIUM FILUM VIAE.

The bed of a tidal river may belong to a subject under a grant from the Crown, or it may be vested by statute in commissioners So also the bed of a non-tidal river may belong, whether by grant or otherwise, to one of two landowners whose lands adjoin it or to a person who owns no adjoining land. The owner of the bed of a river may erect on it any structures which he might erect on it if it were dry land, but, in the one case as in the other, he must not interfere with his neighbours' rights; so that no one can erect any structure in a river which interferes with the flow of water over such parts of the bed as are owned by others, and, if the river be navigable, he can do nothing which will interfere with navigation.

Where a river gradually and imperceptibly changes its bed, the *medium filum* changes with it: but if the change is sudden and perceptible, or from the old channel to an entirely new channel, the line of demarcation between adjoining owners is the *medium filum* as it existed before the change.

No matter how a navigable river may change its bed, the right of navigation enures in the new bed, but subject to any obstruction therein by structures which before the change did not obstruct navigation.

Bedchamber Question. This was a question, raised for the first time in 1839 when Sir Robert Peel was sent for by the Queen to take office in succession to Lord Melbourne; and the question was simply this,—whether the ladies of the royal household (more especially where the sovereign was a queen) were to go out with the out going ministry, upon the ground that their near relationship to that ministry was likely to thwart, or render insecure or unstable, the acts of the incoming ministry. The Queen herself was opposed to the change, and Sir Robert Peel refused to accept office in consequence; but in 1841, when Sir Robert Peel took office, the question was decided in the way he had contended for in 1839.

Bedel. A variant of the word "beadle." Bedels are macebearers at the Universities of Oxford and Cambridge.

Bederepe = Bedrip (q.v.).

Bedford Level. This is the name of a district in the Eastern Counties, formerly known as the Great Level of the Fens, the draining of which was begun in 1634 by Francis Earl of Bedford. The principal statute relating to the district is the 15 Car. 2, c. 17 (popularly known as the Bedford Level Act), passed in 1663, s. 6 whereof initiated a system under which all leases, grants or conveyances of or relating to the lands in the Level—other than leases in possession for not more than seven years—are to be registered in the Bedford Level Register. The operation of the Bedford Level Act as regards registration has been restricted by the North Level Act, 1857 (20 & 21 Vict. c. cix.), s. 45, and by the Middle Level Act, 1862 (25 & 26 Vict. c. clxxxviii.), s. 45. A lease which requires registration is not rendered void by non-registration. It is, however, postponed to a subsequent registered assurance and the lessee is not entitled to the special privileges conferred by the Bedford Level Act.

See EAU-BRINK, which relates to a part of the level.

Bedrip. A service upon which some tenants formerly held. It consisted in reaping the lord's corn for one, two, or three days. Jacob, writing in 1749, speaks of it as not being wholly obsolete then.

Beer. "The expression 'beer' includes ale, porter, spruce beer, black beer, and any other description of beer, and any liquor which is made or sold as a substitute for beer and which on analysis of a sample thereof at any time is found to contain more than two per cent. of proof spirit" (Finance (1909-10) Act, 1910, s. 52).

Bees. Bees are *feræ naturæ* and, as in the case of other animals of that class, there can be no property in them until they are captured. Thus, if bees swarm on a tree there is no property in them until they have been got into a hive. If they are got into a hive, they become the property of the man on whose

land they had swarmed. Reclaimed bees—that is to say, bees in a hive—are the subject of larceny at common law. If bees leave a hive, they continue to be the property of their owner so long as he can see them and follow them. There is no express decision as to whether, apart from negligence, the owner of bees is liable for damage resulting from their sting. In an Irish case decided in 1901 the owner of bees was held liable for personal injuries caused to a horse which had been stung by the bees when the owner smoked out a number of hives to get honey: but the jury in that case found that the bees were kept by the defendant negligently, in unreasonable numbers, and to the danger of persons on adjoining land, and that on the occasion in question he had not taken honey from the hives with reasonable care, skill and prudence. The jury further found that these particular bees were of a dangerous and mischievous nature and accustomed to sting mankind and domestic animals: but that finding can scarcely be regarded as an authority regarding the nature and habits of bees; and it is submitted that the owner of bees kept in a proper place and skilfully managed is not liable for damage done by them, for it is a matter of common knowledge that bees do not generally attack without provocation.

Beggar. Any person begging, or placing himself to gather alms, in any public place or procuring any child so to do, is punishable as an idle and disorderly person (q.v.) (Vagrancy Act, 1824, s. 3). Any person wandering abroad and endeavouring to obtain alms is liable to the like punishment (*ib.*, s. 4).

The offence of causing, procuring or allowing a child or young person to beg or by any means to induce the giving of alms is now punishable under the Children Act, 1908, s. 14.

Strikers making in an orderly way a collection for strike funds are not guilty of an offence under s. 3 of the Vagrancy Act, 1824.

Begging Letter. Where a person endeavours to obtain charitable contributions by means of false or fraudulent pretences contained in a letter, he is liable for a first offence to be convicted as a rogue and a vagabond under the Vagrancy Act, 1824, s. 4 (ii). After a first conviction as a rogue and a vagabond, a person writing or using any such letter may be committed to quarter sessions, there to be dealt with as an incorrigible rogue (*ib.*, s. 5). (See VAGRANCY.) If any person actually obtains money, etc., by means of such a letter he is guilty of a misdemeanour under the Larceny Act, 1916, s. 32 (1); and if the facts merely prove an attempt, he commits a common law misdemeanour. The facts are held to prove only an attempt if the recipient of the letter parts with money (1) although he knows the statements made therein to be false, or (2) on the strength, not of the statements in the letter, but of some test applied by himself.

Behring Sea Award Act, 1894. This statute confirmed the award, as set out in the schedule, made 15th August, 1893, by the arbitrators to whom, in pursuance of a treaty between this country and the U.S.A., various questions respecting the taking and preservation of the fur-seal in the North Pacific had been referred for decision. This award, however, left open certain other points which finally came before the Tribunal of the Hague (q.v.).

Belligerent. This means a nation or party of persons carrying on war according to the law of nations, as distinguished from irregular combatants who have no rights under the law of nations.

Bello parta cedunt Reipublicae. (What is acquired in war belongs to the Crown.) This maxim is quoted by Sir William Scott (afterwards Lord Stowell), judge of the Admiralty Court, at 5 *Rob.* 181, as illustrating the doctrine that all naval prize belongs primarily to the Crown, and by Lord Brougham, L.C., at 5 *Russ. & My.* 56, as illustrating the like doctrine with regard to military prize.

Bench. The Justices of the Court of Common Pleas were anciently known as *justiciarii de banco* or justices of the bench, and, down to the time of the Judicature Acts, they were technically known as "Justices of the Bench at Westminster."

The term is now used to denote either judges or magistrates collectively or a single judge or magistrate. A barrister is said to be raised to the bench when he is made a judge. A magistrate or magistrates, and a judge or judges, are spoken of as "the bench" when sitting in the discharge of judicial functions. In the phrase "bench and bar," the word "bench" denotes the judges collectively as distinguished from barristers collectively.

The bench of an Inn of Court consists of the benchers (q.v.).

Benchers, or Masters of the Bench. The governing body of each of the four Inns of Court consists of the benchers. Judges of the High Court are invariably benchers of their respective Inns; the other benchers may be either King's counsel or barristers below that rank; but no person can as of right claim to

be a bencher, and each existing body of benchers can at their discretion invite to the bench of their Inn any member of the Inn whom they in their uncontrolled discretion may select. Benchers have complete control of the property of their Inn. Subject only to an appeal to the Lord Chancellor and the Judges of the High Court, sitting as a domestic tribunal and not as a Court of Justice, the benchers have an absolute discretion as to the admission of students, as to calls to the bar, as to disbarring, and also as to disbenching a member of their own bench.

The Courts will not entertain any action as to any matter in dispute between benchers and a member of their Inn; nor will they in any action investigate the propriety of the decision of the benchers as regards any such matter, the policy of the law being that, as regards any such matter, the only appeal from the decision of the benchers is to the domestic tribunal above-mentioned.

Bench Warrant. This is a warrant issued by a Court of record for the arrest of a person against whom an indictment for treason, felony or misdemeanour has been found, or against whom articles of the peace (q.v.) have been exhibited, if such person does not appear to answer the indictment or articles. It is not generally issued before the last day of assizes or quarter sessions. It is signed at assizes by one of the judges and at quarter sessions by two of the justices; and in either case this is done while the Court is sitting.

Such a warrant can be executed, without being backed, in any part of England. A person arrested thereon is brought into the jurisdiction of the Court from which the warrant issued and is there detained in gaol until trial or until he is bailed.

In cases where a bench warrant could issue, it is now usual to obtain instead a warrant under the Indictable Offences Act, 1848, s. 3, or else to have recourse to the procedure under the Crown Office Rules, 1906, rr. 32, 75, 76.

Where an order of committal for contempt of court has been issued to a tipstaff and the tipstaff cannot find the person named in the order, a judge of the High Court may issue a warrant also known as a bench warrant directed to the tipstaff "and all constables and other peace officers whom it may concern."

Benedicta est expositio quando res redimitur a destructione (4 *Rep.* 26). (Blessed is the exposition by which anything is saved from destruction.) This maxim is quoted in the King's Bench decision, given at 4 *Rep.* 26, that the copyholders' court—or customary court baron—might be held even where there were no free tenants.

Benefice; Beneficium. This, in its wider sense, means any ecclesiastical promotion or spiritual living whatsoever. Ordinarily, however, it denotes what is technically called "a benefice with cure of souls," that is, the office and emoluments of a rector or vicar of a parochial church, including the cure of souls, and, in the case of a rector, the freehold of the parsonage house, the glebe, the tithes and other dues, or, in the case of a vicar, a proportion of these emoluments. See ADVOWSON; APPROPRIATION; CURATE; QUARE IMPEDIT; USURPATION: and see also the Benefices Act, 1898. As to deprivation of benefice, see DEPRIVATION.

For some time after the Norman Conquest *beneficia* meant also lands given by feudal superiors to their followers upon consideration of their swearing fealty and performing military service; but subsequently such lands came to be known as feuds (q.v.).

Beneficial Owner. Under the Conveyancing and Law of Property Act, 1881, s. 7, any person who in any conveyance conveys and is expressed to convey as beneficial owner or any person who is expressed to direct as beneficial owner another person who conveys, thereby by implication imports into the conveyance a number of covenants for title which before the Act were explicitly set out. Those covenants were for right to convey, for quiet enjoyment, for freedom from incumbrance and for further assurance and so forth. See COVENANTS.

Beneficiaries are persons for whose benefit property is held by trustees, executors, etc. (See TRUST.) The word is now largely used instead of the older *cestuis que trust*.

Beneficio primo ecclesiastico habendo, De. A writ to the same effect as the writ PRIMO BENEFICIO, DE (q.v.).

Benefit Building Society is the old-fashioned name for what is now more commonly called a building society (q.v.).

Benefit (or privilege) of Clergy. This formerly signified certain privileges or exemptions which the clergy alone enjoyed. It had its origin in the pious regard paid by Christian princes to the Church in its infant state. The exemptions which were granted to the Church were principally of two kinds: (1) Exemption of places consecrated to religious duties from arrest on criminal charges, which was the foundation of sanctuaries; (2) Exemption of the persons of clergymen from criminal process before the secular judge in a few particular

cases, which was the true original meaning of the phrase "benefit of clergy." In England, however, a total exemption of the clergy from secular jurisdiction could never be thoroughly effected, though often sought by the clergy; and therefore, though the ancient benefit of clergy was allowed in some capital cases, yet it was not universally allowed. And in some particular cases the custom was for the bishop or ordinary to demand the clerks to be remitted out of the king's courts as soon as they were indicted; concerning the allowance of which demand there was for many years great uncertainty, till at length it was finally settled, in the reign of Henry VI., that the prisoner should first be arraigned, and might then claim his benefit of clergy by way of declinatory plea; or after conviction by way of arresting judgment. But afterwards other persons were placed upon the same footing with the clergy with respect to this privilege. After 1487 persons who claimed their clergy were branded on the thumb, in case of homicide with an M and in case of theft with a T; but the branding was not infrequently done with a cold iron. After the branding the accused, as from 1576, might be either discharged or imprisoned in the civil court for one year only. The effect of the extension of the benefit of clergy was to some extent counteracted by statutes making various offences punishable without benefit of clergy. It was formerly required that those who claimed benefit of clergy should be able to read, and the benefit did not extend to women; but in 1547 peers, even though unable to read, were given an equivalent privilege; and privilege of clergy was extended to women, partially in 1622 and fully in 1692. By 5 Ann. c. 5, it was enacted that benefit of clergy should be granted to all those who were entitled to ask it, without requiring them to read. After that, persons convicted of manslaughters, bigamies, and simple or grand larcenies, etc. (but not, it should be noted, of treason), were asked what they had to say why judgment of death should not be pronounced upon them; and they were then told to kneel down and pray the benefit of the statute, which was given as of right. In 1779 branding was practically abolished. Privilege exempting from punishment for crime was ultimately abolished altogether, as regards all persons other than peers, by the Criminal Law Act, 1827, s. 6, and as regards peers by the Felony Act, 1841.

Benefit of clergy was so thoroughly imbedded in our common law that in the United States of America, which had taken over the common law as the foundation of their legal system, it was necessary to provide, by paragraph 30 of the Act of Congress of 30th April, 1790, that benefit of clergy should not be allowed to anyone convicted of an offence punishable with death.

See NECK VERSE.

Benevolences. These were a mode of early taxation, falling principally, if not exclusively, on the wealthier classes; they purported to be voluntary loans, but were in fact forced contributions not intended to be repaid. Strong sovereigns resorted to them: but the statute 1 Rich. 3, c. 2, declared them illegal, in spite of which Richard III. levied them subsequently and so did Henry VII. Benevolences were afterwards attempted to be levied as an anticipation of the lawful revenue, *i.e.*, subject to a promise of repayment out of the next or some other subsequent subsidy. The statute of Richard III. had been declared illegal by Henry VII.'s lawyers, as being that of a usurper. Eventually in 1628, by the Bill of Rights, the statute of Richard III. was in effect restored. See BILL OF RIGHTS.

Benevolent Societies. These are societies formed "for any benevolent or charitable purpose" (Friendly Societies Act, 1896, s. 8 (3)). They cannot divide funds among the members (*ib.*, s. 15), or hold land exceeding one acre in extent (*ib.*, s. 47 (3)). Otherwise they much resemble friendly societies (q.v.), and are subject to the provisions of the Friendly Societies Act, 1896.

Benevolentia regis habenda. We read that such a one gave the king a thousand marks *pro benevolentia regis habenda* (to obtain the king's good will, that is to say, the king's pardon).

Benignæ faciendæ sunt interpretationes et verba intentioni debent inservire. (Liberal interpretation should be the rule, and the words should be made to carry out the intention.) This maxim is cited at p. 430 of *Broom's Maxims* as giving the principle on which a will should be construed. It seems to be a variant of the maxims at *Co. Litt.* 36.

Benignæ sunt faciendæ interpretationes, cartarum propter simplicitatem laicorum ut res magis valeat quam pereat (*Co. Litt.* 36). (On account of the simple minds of laymen, charters must be interpreted liberally, so that the intention may be carried out rather than defeated.) A like rule applies to all written documents, except, of course, where there is a rigid rule that only a particular meaning can be given to particular words.

Benignior sententia in verbis generalibus

seu dubiis est præferenda (4 *Co.* 15). (The most favourable construction is to be placed on general or doubtful expressions.) The maxim is cited in a judgment of the King's Bench as supporting the proposition that words which are mere vulgar abuse are not actionable, even though in their literal meaning they are clearly slanderous.

Bentham. Jeremy Bentham was born in London in 1748, was educated at Westminster and Oxford, entered at Lincoln's Inn in 1773, travelled in Russia and the east of Europe, and died on the 6th June, 1832. His works fill eleven octavo volumes; the principal legal ones are the *Fragment on Government*, *Principles of Morals and Legislation*, *Judicial Evidence*, and numerous writings on codification and law reform; many of his suggestions have been carried into effect; most of the others are impracticable.

Bequeath; Bequest. To bequeath property is to leave it by will, and a bequest is a gift by will; the terms are applied only to personal property. A residuary bequest is a gift of the residue of the testator's personal estate, namely, of what is left after payment of debts and legacies, etc. See RESIDUE; LEGACY; LEGATEE; DEVISE.

A specific bequest (not a specific legacy) is where a testator bequeaths to a person all his property of a certain class or kind, *e.g.*, all his pure personalty.

An executory bequest is the bequest of a future, deferred, or contingent interest in personalty. See EXECUTORY INTEREST.

Berghmaster; Berghmoth; Berghmote. These are variants of BARMASTER; BARMOTE (q.v.).

Bermuda Company. See COMPANIES, CHARTERED.

Berne Convention. This was an international convention drawn up at Berne in 1886. The parties to it ultimately were Great Britain, France, Belgium, Germany, Spain, Switzerland, Italy, Norway, Tunis, Liberia and Hayti. The object of the convention was to create an international union for the protection of literary and artistic copyright. On 25th June, 1886, the International Copyright Act, 1886 (49 & 50 Vict. c. 33), was passed in order to enable the British Government to give effect to the provisions of the convention; and on 9th September, 1886, Great Britain signed the convention.

The Berne Convention was modified by a further convention, known as the Revised Berne Convention of 1908, or as the Berlin Convention, drawn up at a conference of the Powers at Berlin in 1908. Great Britain signed this revised convention on 13th November, 1908. The law of copyright, as it then stood, was not in accordance with the provisions of the revised convention; and accordingly it became necessary to enact the Copyright Act, 1911, as to which see COPYRIGHT.

Berton = Barton (q.v.).

Berwick-upon-Tweed. During the Middle Ages this town enjoyed a *quasi*-independence under what would now be called the suzerainty of Scotland originally and of England subsequently. It was represented in the Scottish Parliament by two members from 1476 to 1479: but as from 1482 down to 1885 it sent two members to the English Parliament. It is not part of the county of Northumberland; but it is part of England; and the Wales and Berwick Act, 1746, s. 3, provides that in all Acts, whether passed before or after 1746, the expressions "the Kingdom of England," and "that part of Great Britain called England," shall include Berwick-upon-Tweed.

Besail. A father of a grandfather. A writ of besail was a real action which lay for the recovery of lands of which the father of the heir's grandfather had been seised on the day of his death and which had been abated by a stranger. See ABATEMENT OF FREEHOLD; AIEL; COSINAGE.

Beset. The Conspiracy and Protection of Property Act, 1875, s. 7, provides that anyone commits an offence who watches or besets the house or other place where another person resides or works or happens to be or the approach to such house or place. This is still law: but so also is the Trade Disputes Act, 1906, s. 2, which provides that it shall be lawful for one or more persons—there is no limit to the number—acting in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

Betterment. A betterment or improvement charge is one levied on increased value of property resulting from improvements effected by a local authority. When such a charge is authorised by statute, the statute fixes what is called an improvement area: provides machinery under which the increased value of all lands and premises within the area may be ascertained; and then authorises a charge at such-and-such a rate per cent. on,

for instance, half of the increased value so ascertained. (See, for instance, the London County Council (Tower Bridge Southern Approach) Act, 1895 (58 & 59 Vict. c. cxxx.).)

Betting. This is merely a form of wagering contract under which money or money's worth is made payable on the result of some uncertain event, such, for instance, as a horse race, a football match, or a boxing contest.

Betting is no offence at common law and it is still no offence to bet at a race-meeting. But betting in streets or public places is punishable under the Street Betting Act, 1906, and also under various local Acts; and the sending to persons under twenty-one of letters, etc., for the purpose of inducing them to bet is punishable under the Betting and Loans (Infants) Act, 1892.

As to houses used for betting, see BETTING HOUSES.

As to wagering contracts in connection with life or marine insurance or on the Stock Exchange, see INSURANCE; INTEREST; WAGERING POLICY.

The Ready Money Football Betting Act, 1920, was passed in order to prevent the writing, printing, publishing, or circulating in the United Kingdom of advertisements, circulars, or coupons of any ready money football betting business. See GAMING; WAGERING; WELSHING.

Betting House. The keeping of a betting house was no offence at common law, unless it was so kept as to be a public nuisance. But the Betting Act, 1853, s. 1, provides that no house or place may be used for betting, and that the use of any house or place for betting is a common nuisance. The "rings" or enclosures on racecourses are not places within the meaning of this Act. Section 2 declares that any house or place kept for betting shall be deemed to be a common gaming house within the meaning of the Gaming Act, 1845; which, as will be seen from GAMING, provides heavy penalties for keeping a common gaming house. The Act of 1853 also, by s. 3, provides a summary punishment for the offence.

The Licensing (Consolidation) Act, 1910, s. 79 (2), provides a summary punishment for any holder of a justices' licence using his premises in contravention of the Betting Act, 1853, or suffering them to be so used.

Publishing or exhibiting any advertisement, etc., in connection with a betting house is an offence punishable summarily under the Betting Act, 1853, s. 7, and the Betting Act, 1874, s. 15.

Beyond Seas. See ABSENCE BEYOND SEAS.

Bias. This means, with regard to the bowl used in bowling, the shape which prevents the bowl from running straight. With regard to anyone acting in a judicial capacity, it means anything which tends or may be regarded as tending to cause such person to decide a case otherwise than on the evidence. No justice, and no judge, can adjudicate in any case in which he has a pecuniary interest, no matter how small. Thus a judge will not try a case affecting a company in which he is a shareholder; and if a justice, through inadvertence or otherwise, is even one of several justices who adjudicate on such a case any decision of the bench will be quashed. Moreover, no one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind. And so, where two justices, who were members of a county council, took an active part in carrying at the council a resolution that one of the council's officers should apply at petty sessions for an order empowering him to enter upon certain lands, and subsequently persisted in adjudicating on his application, the order of the Court was set with costs against both justices. The general principle is that a judge or justice must be not merely fair but above suspicion of unfairness. See INTEREST, DISQUALIFICATION FOR; ALIQUIS NON, ETC.

Bicycle. See CYCLING.

Bidding Prayer. Canon 55 of the Canons of 1603 directs that before the sermon there be offered up a prayer for the King, for all spiritual and temporal authorities, for all Christian peoples, etc. This is known as the bidding prayer.

Bigamis, Statutum de. The statute 4 Edw. 1, c. 5, see BIGAMY.

Bigamy. In ecclesiastical law this meant any second marriage whatsoever. Even in English law a man who was a *bigamus*, or person who had married either a widow or two wives, was excluded from benefit of clergy by the statutes 4 Edw. 1, c. 5 and 18 Edw. 3, c. 2; but this exclusion was removed by the statute 1 Edw. 6, c. 12, s. 16. Now, except in the case dealt with under ABSENCE FOR SEVEN YEARS, bigamy is committed by any person who, being married, marries any other person during the life of the former wife or husband, whether the second marriage takes place in England or elsewhere (Offences against the Person Act, 1861, s. 57); but that enactment does not apply to any second marriage contracted elsewhere than in England or Ireland by any person other than a British

subject (*ib.*). The section also goes on to declare that it does not apply where the bond of the first marriage has been dissolved by divorce or where the first marriage has been declared void by a Court of competent jurisdiction; but such declaration appears superfluous, as in neither of such cases can the alleged offender be any longer described as "being married."

A person, not being married, who contracts a bigamous marriage with knowledge that the other party is married, is punishable as a principal in the second degree.

As regards bigamy, marriage means a monogamous marriage which is recognised either by the law of England or by the law of the country where the marriage takes place. A man does not commit bigamy if he marries while he has a *quasi*-wife living whom he has married after the manner of a savage tribe with whom marriage is far from being monogamous. The fact that the first marriage is void—as in the case of marriage with a deceased wife's sister down to 1907—is a defence; but the fact that the first marriage is voidable—as for impotence—is no defence.

The husband or wife of any person charged with bigamy may be called as a witness either for the prosecution or the defence and without the consent of the person charged (Criminal Justice Administration Act, 1914, s. 28 (3)), but neither the husband nor the wife is a compellable witness either for the defence or for the prosecution, and he or she, if called, should be so informed before being sworn. When the first marriage has been proved, the second "wife" or "husband" is, however, a compellable witness.

A bigamous marriage which has been consummated is, in the case of either a husband or a wife, a ground for a decree of divorce *a vinculo* (Matrimonial Causes Act, 1857, s 27), and if a wife petitions for a divorce on such grounds she is a competent witness to prove the first marriage.

Bilanciis deferendis, De. A writ directing that scales should be taken at such and such a port to weigh wool which was being exported.

Bilinguis. This, in the law, meant a jury composed partly of Englishmen and partly of aliens. Such a jury was properly described as a jury *e medietate linguae* and was popularly known as a "party jury." Under various statutes it was anciently used in civil actions between Englishmen and aliens. Under the Juries Act, 1825, s. 47, the Court before whom an alien was indicted for felony or misdemeanour was empowered to direct, if the alien so required, the sheriff to empanel a jury consisting as to one half of aliens if so many aliens were available: but since 1870 an alien is tried as if he were a natural-born British subject: see now the British Nationality and Status of Aliens Act, 1914, s. 18. See CARTA MERCATORIA.

Bill primarily means a letter or writing. In addition to the kinds of bill described under subsequent titles, the word has the following meanings in law:—

In parliamentary practice, bills are incomplete Acts of Parliament. When a bill has passed both Houses of Parliament and received the Royal Assent, it becomes an Act of Parliament (q.v.). Bills, like Acts, are divided into public and private, but bills which, though they are local in their nature, are yet of public interest (*e.g.*, bills affecting Crown property or the Metropolis, etc.), were sometimes called hybrid bills, and are introduced as public bills. A bill of attainder is a bill formulating an accusation against a peer, or other high personage, in a matter of public importance, declaring him to be attainted and his property to be forfeited. It resembles an impeachment (q.v.), except that it may be introduced in either house and that it requires no evidence in the judicial sense. Such bills have become obsolete.

In criminal procedure, an indictment is presented to the grand jury under the name of a bill, and is not technically an indictment until so found by the jury. See INDICTMENT.

"Bill" also signified formerly the draft of a patent for a charter, commission, dignity, office or appointment; such a bill was drawn up in the Attorney-General's Patent Bill Office and submitted by a Secretary of State for the signature of the Sovereign, after receiving which it was called the King's, or Queen's, Bill; it was countersigned by the Secretary of State and sealed by the Privy Seal (q v.), and then the patent was prepared and sealed. But now all these formalities have been done away with. A warrant under the sign manual, countersigned by the Lord Chancellor or by a Secretary of State or by two of the Treasury Commissioners, is a sufficient authority for passing any document under the Great Seal (Great Seal Act, 1884, s. 1). Such a warrant must be prepared in manner provided by the Crown Office Act, 1877. The use of the Privy Seal is wholly abolished (Great Seal Act, 1884, s. 3).

Bill of Complaint; Bill in Chancery; Bill in Equity. Under the practice of the Court

of Chancery, before the Judicature Acts (q.v.), an ordinary suit was commenced by filing or exhibiting a bill of complaint, which was a printed document in the form of a petition, addressed in ordinary cases to the Lord Chancellor, containing a statement of the plaintiff's case, and concluding with a prayer asking for the relief which he filed the bill to obtain. A bill, therefore, consisted of four parts:—(1) The title, giving the description of the Court and the names of the plaintiffs and defendants; (2) the address to the Lord Chancellor; (3) the statement or stating part; and (4) the prayer. The bill was signed by the counsel who had settled it. The bill by which a suit was commenced was called an original bill, as opposed to an amended bill (see AMENDMENT). The bill was served on the defendant as a writ is under the new practice. It therefore combined the functions of a writ of summons and a statement of claim (q.v.).

The bill being the first step in a suit, the word "bill" was often used as synonymous with "suit"; and in this sense bills were of three kinds, original, in the nature of original, and not original. A bill was called original when it related to matters not already before the Court, and either prayed relief or was filed for some subsidiary purpose. Bills praying relief were of infinite variety according to the right or equity sought to be maintained; bills having special names were interpleader and *certiorari* bills (see those titles); bills *quia timet*, to prevent an anticipated loss or injury; and bills of peace, to establish a right which might otherwise be made the subject of repeated litigation. These kinds of bills were, however, rare in practice. Bills not praying relief were of two kinds—(1) bills to perpetuate the testimony of witnesses (see PERPETUATION OF TESTIMONY); (2) bills of discovery (see DISCOVERY), of which the principal parts were the stating part, containing the statement of facts; the charging part, alleging that the defendants set up a certain defence and charging or asserting matter to avoid it (see AVOIDANCE); and the interrogating part, in which the essential statements were repeated in the form of interrogatories.

Anciently an ordinary suit in Chancery was called a suit by English bill, by way of distinction from suits on the common law side of the Court, which were conducted in Norman French or Latin (Mitford, 8). (See CHANCERY; ENGLISH INFORMATION.)

Bills in the nature of original bills, and bills not original had ceased to be of practical interest long before the Judicature Acts, they included supplemental bills, filed to supply defects or omissions in original bills; bills of revivor, to revive abated suits (see REVIVOR); and bills of review, filed to obtain the reversal or alteration of a decree made in a former suit between the same parties.

Where a person filed a bill claiming relief, but did not know whether the real facts would support his case and intended to find out by interrogatories facts on which to found his claim, the bill was called a fishing bill. See SUIT; ACTIONS AND MATTERS; CHANCERY; INFORMATION; PLEADING.

Bill of Costs is an account of fees, charges and disbursements by a solicitor in a legal business. As to costs generally and their taxation, see those titles. It may here be mentioned that the Court has jurisdiction under the Solicitors Act, 1843, s. 37, to make an order for the delivery by a solicitor of a bill of costs against his client; this is necessary where the solicitor claims a lien on a fund or on papers in his possession, so that they cannot be dealt with until his costs have been paid. Also under the Attorneys and Solicitors Act, 1870, a solicitor may make an agreement in writing with his client as to his remuneration by a gross sum, percentage, salary or otherwise; such an agreement, however, is liable to be reviewed by a taxing master. In the absence of any such agreement, no action may be commenced by any solicitor or his personal representative for the recovery of any fees, charges or disbursements until the expiration of a clear calendar month after the bill of costs therefor has been delivered to the person to be charged (Solicitors Act, 1843, ss. 37, 48) unless special leave be given by a judge of the High Court to commence the action earlier because of the insolvency, etc., of the proposed defendant (Legal Practitioners Act, 1875, c. 79). A claim for the amount of a bill of costs may be endorsed on the writ, and final judgment may be applied for under Ord. 14. Any judgment recovered will be for the bill of costs subject to taxation.

Bill of Cravings. This was the list of expenses incurred by a sheriff for judges' lodgings, executions, etc., during his year of office: he had to furnish it when passing his accounts. See QUIETUS.

Bill of Credit. More usually termed a letter of credit (q.v.). See also CIRCULAR NOTE.

Bill of Debt; Bill Obligatory. This was a writing by which a merchant acknowledged himself to owe such-and-such a sum to another and promised payment at a certain place on

a certain date. It might or might not be under seal. It was virtually a bill of exchange. See *Com. Dig.* " Merchant," f. 2.

Bill of Entry. This is a certificate given by importers of goods to the customs authorities. It sets out particulars of the goods and states the port, etc., from which they have been imported. See the Customs Consolidation Act, 1876, Sch. B. The term is also applied to the certificate given to the customs authorities by an exporter of goods from a British port.

Bill of Exceptions. Under the old common law practice, if a judge at the trial of an action misdirected the jury on a point of law, or improperly received or rejected evidence, he might be required to seal a bill of exceptions, which was a document containing a statement of the objections taken by the party aggrieved. The bill was then argued before the Court of Error; and if the objections were held to be well founded there was a trial *de novo*. Bills of exceptions have been abolished, as regards actions in the superior Courts by the Common Law Procedure Act, 1852, s. 148, and as regards inferior Courts of civil jurisdiction by R. S. C., 1875, Ord. 58, r. 1. The same result is now obtained by a motion for a new trial, as regards actions in the superior Courts, and, as regards decisions of inferior Courts of civil jurisdiction, by appeal as provided in R. S. C. Ord. 59, rr. 9-18.

Bills of exceptions never lay in criminal cases, the corresponding remedy in such cases down to 1907 being a writ of error (q.v.).

Bill of Exchange is an unconditional written order from A. to B., directing B. to pay C., or (Bills of Exchange Act, 1882, s. 7 (1)), C. and D. jointly or alternatively, or the holder of an office for the time being, a certain sum of money therein named, either on demand or at sight, or at any certain period after date or after sight. (See Days of Grace.) A. is called the drawer, B. the drawee, and C. the payee; sometimes A., the drawer, is himself the payee. The holder of a bill may treat it as a promissory note (q.v.) if the drawer and drawee are the same person (*ib.*, s. 5 (2)). When B., the drawee, has, by accepting the bill, undertaken to pay it, he is called the acceptor. (See Acceptance.)

If a bill is made payable to C. without more, that makes it payable to " C. or order " (Bills of Exchange Act, 1882, s. 8 (4)), unless it contains words indicating that it is not transferable (*ib.*, s. 8 (1)). Usually, however, a bill is made payable either to " C. or order," or to " C. or bearer." Whether the bill is made payable to " C." or to " C. or order," C. can transfer the bill by a written order to pay to someone else (D.), who, after the bill has been delivered to him, becomes the holder of it (*ib.*, s. 31), and can transfer it to E., and so on. This order is generally written on the back of the bill, and is called an indorsement, C. being then the indorser, and D. the indorsee. If the bill is payable to " C. or bearer," C. can transfer it to D. by merely delivering it to him (*ib.*, s. 31 (2)). A bill payable to order may be converted into a bill to bearer if the payee or indorsee indorses it in blank, that is to say, without specifying an indorsee (*ib.*, s. 34 (1)); but after a bill has been indorsed in blank any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of any person (*ib.*, s. 34 (4)). (See Indorsement.) " Holder " is a general word applied to anyone in actual or constructive possession of a bill, and entitled to recover and receive its contents from the parties to it, viz., the acceptor, drawer, and indorsers.

The legal effect of drawing a bill is a conditional contract by the drawer to pay the bill if the drawee dishonours it, either by failing to accept it or, having accepted it, by failing to pay it at maturity. The effect of accepting a bill is an absolute contract by the acceptor to pay the bill. The effect of indorsing a bill is a contract by the indorser to pay his immediate or any succeeding indorsee, or the bearer, in case of the acceptor's default. But if the bill is not presented for payment at the proper time, all the antecedent parties, except the acceptor, are discharged from liability, and the liability of an acceptor may be qualified by the terms of his acceptance (Bills of Exchange Act, 1882, s. 19), but the payer of a bill may treat a conditional indorsement as if it were unconditional (*ib.*, s. 33).

When the drawee of a bill fails to accept it on its being presented to him for that purpose, it is said to be dishonoured by non-acceptance; when the acceptor of a bill fails to pay it on presentment at the proper time, it is said to be dishonoured by non-payment. As a general rule, it is incumbent on the holder of a bill which has been dishonoured to give prompt notice of the fact to the antecedent parties, otherwise they will be discharged from all liability.

When a bill is made payable at a certain time (*e.g.*, thirty days after date or sight), on that time arriving the bill is said to be at

maturity or due. After that time it is said to be overdue or afterdue. The negotiability of an overdue bill is qualified to the extent that it can only be negotiated subject to any defect of title affecting it at maturity (Bills of Exchange Act, 1882, s. 36 (2)). (See NEGOTIABLE; EQUITY.)

Bills of exchange, like promissory notes and a few other instruments, differ from other simple contracts, first, in their negotiability, and secondly, in being presumed to have been given or transferred for valuable consideration until the contrary is proved. A bill which originally was negotiable remains negotiable unless it is restrictively indorsed pursuant to s. 35 of the Bills of Exchange Act, 1882 (*ib.*, s. 36).

As to ACCOMMODATION BILLS, see that title.

Bills of exchange are either inland or foreign. Inland bills are those which are both drawn and payable within the limits of the British Islands; all others are foreign bills. Any holder of a bill may treat it as an inland bill unless the contrary appears on its face (Bills of Exchange Act, 1882, s. 4 (2)). Foreign bills differ from inland bills principally in being frequently drawn in sets or parts, and in requiring to be protested on dishonour in order to charge the drawer. (See PROTEST.) Exemplars or parts of a bill are separate copies, each part being numbered and referring to the other parts, but all the parts are signed by the drawer and are otherwise identical with one another. All the parts together make a set, and the whole set constitutes but one bill, so that the payment of one part extinguishes all. The object of drawing a bill in parts is to guard against loss and to facilitate negotiation.

The Bills of Exchange Act, 1882 (to which reference should be made for more detailed information), codifies and in some respects alters the pre-existing law as to bills. As to lost bills, see ACCIDENT. See BANK HOLIDAY; EQUITY; FAST DAY; INDORSE.

Bill of Health is a document given to the master of a ship by the consul of the port from which he comes, describing the sanitary state of the place. It may be a clean, suspected, or foul bill. The first is given where no disease of an infectious or contagious kind is known to exist; the second where, though no such disease has appeared, there is reason to fear it; and the last, when such a disease actually exists at the time of the ship's departure. The latter subjects the ship to the full period of quarantine.

Bill of Indemnity. See ACT OF INDEMNITY.

Bill of Lading. Where a ship is not chartered wholly to one person, but the owners offer her generally to carry the goods of any merchants who may choose to employ her, or where, if chartered to one merchant, he offers her to several sub-freighters for the conveyance of their goods, she is called a general ship. In these cases the contract entered into by and with the owners, or the master on their behalf, is evidenced by the bill of lading. This is a document which is signed and delivered by the master to the shippers on the goods being shipped. In practice, when goods are shipped an acknowledgment is given by the mate, known as the "mate's receipt." This is afterwards exchanged by the captain or the broker of the ship for the bill of lading. Several parts, that is to say copies, of the bill of lading are commonly made out; one or more of these is sent by the shipper of the goods to the person for whom they are intended (the consignee), one is retained by the shipper himself, and another is kept by the master for his own guidance.

A bill of lading specifies the name of the master, the port and destination of the ship, the goods, the consignee, and the rate of freight.

A bill of lading is a negotiable instrument, and the property in the goods which it represents is transferred by its indorsement and delivery, subject to any rights of stoppage *in transitu*, liability to freight, etc.

Bill of Middlesex. The Court of King's Bench had no jurisdiction in purely civil actions; but they managed to acquire it by means of the Bill of Middlesex. A writ known by that name was issued to the sheriff of Middlesex commanding him to arrest the defendant for an imaginary trespass (in which the Court had jurisdiction) and to bring him before the Court. When he was brought before the Court, he was proceeded against for any cause of action. If the defendant was not to be found in Middlesex, the sheriff made a return of *non est inventus*; whereupon the Court issued the writ of latitat (q.v.), reciting the Bill of Middlesex and the sheriff's return, and commanding the sheriff of some other county to arrest the defendant. In course of time the Bill of Middlesex was never in fact issued when the defendant resided elsewhere than in Middlesex; and in such a case the writ of latitat, reciting the issue of an imaginary bill, was issued forthwith. The writ of latitat then came to be known as a Bill of Middlesex.

This procedure was abolished by the statute

[illegible] known as the Uniformity of Process Act.

Bill of Pains and Penalties. A bill introduced, generally in the House of Lords but sometimes in the House of Commons, for the punishment of a particular person without trial in the ordinary way. A bill of attainder (q.v.) always imposed the penalty of death: a bill of pains and penalties inflicted a less penalty. The person against whom a bill either of attainder or of pains and penalties was introduced could defend himself before each House by counsel and witnesses: but the procedure upon either of such bills was in other respects the same as on ordinary bills. A bill of attainder was introduced only in cases of alleged treason or felony: a bill of pains and penalties could be introduced not only for treason or felony but also in other cases of conduct tending to grave public mischief. Both bills of attainder and bills of pains and penalties expressed the united judgment of the Crown, the Lords and the Commons; whereas in an impeachment (q.v.) the Commons were merely the accusers and the Lords were the sole judges.

The last bill of pains and penalties was that against Queen Caroline in 1820. The Titles Deprivation Act, 1917, was, however, much in the nature of a bill of pains and penalties. That Act empowered the King to appoint a committee of the Privy Council to enquire as to, and report the names of, any persons enjoying any dignity or title as a peer or British prince who during the then war had borne arms against the King or the King's allies or had adhered to the King's enemies; after the report of the committee had lain for forty days on the table of each House of Parliament without either House disapproving thereof any person named therein was to lose his peerage or dignity; but—and this marks a departure from the former practice of making children suffer for the wrongdoing of their parents—any successor of any peer so deprived of a peerage may be restored to the peerage if he satisfies the committee that he is well disposed and has incurred no disability under the Act; and—which again is a departure from former practice—nothing in the Act affects the title of any person to estates or other property.

Under this Act a number of peers, including, for instance, Viscount Taaffe, were deprived of their peerages.

Bill of Particulars. A bill of particulars, or, as it was frequently termed, a particular of plaintiff's demand, was a statement in writing of what the plaintiff sought to recover in his action. It's object was to furnish the defendant with a better or more specific statement of the plaintiff's cause of action than was to be collected from the declaration or summons. The bill of particulars differed from the declaration (q.v.), inasmuch as the one disclosed the nature and legal effect of the plaintiff's claim, the other its component ingredients.

R. S. C Ord. 19, r. 6, gives the cases in which particulars must now be stated in the pleadings; r. 7 of the same Order provides machinery for obtaining further and better particulars. As to statement of particulars after interlocutory judgment has been signed, see Ord. 13, r. 5.

Bill of Peace. Formerly, where the same question had been frequently litigated in the same manner (as where repeated actions of ejectment had been brought for the same land), or where it was likely to be contested in a multiplicity of suits (as where the tenants of a manor had a dispute with the lord), a bill might have been filed in Chancery to restrain the vexatious or unnecessary litigation by perpetual injunction: this was called a bill of peace. Now the evil at which a bill of peace was aimed is provided against by R. S. C., Ord. 16, r. 9, dealing with representative actions, and Ord. 25, r. 5, dealing with declarations of right: and where frivolous applications are repeatedly made to impeach a judgment, an injunction may be obtained to restrain further applications in the matter by the same parties. See ABUSE OF PROCESS.

Bill of Proof. In a proceeding for foreign attachment (q.v.) it was a rule that the garnishee could not raise the defendant's want of title as a defence to the attachment, and, therefore, he could not show that the property to be attached really belonged to a third person: the real owner, however, was permitted to do this by what was called a bill of proof, which was a claim by him to be admitted to prove that the property was his; thus, if the defendant delivered to the garnishee goods belonging to A., and the plaintiff issued an attachment against them, A. had to file a bill of proof in order to show his right to the goods; having filed his bill, he was called the approver. The plaintiff appeared to the bill of proof, and the approver delivered the probation, which was in the nature of a declaration, and set forth the approver's title; the plaintiff then pleaded and the issue was tried as in ordinary cases, the approver being in the position of plaintiff for the purpose of the trial of the issue.

Bill of Review; Bill of Revivor. See BILL OF COMPLAINT.

Bill of Rights. The statute 1 Will. & Mary, stat. 2, c. 2, is so termed because it declares the true rights of British subjects. The short contents of it are as follows: After reciting the various unconstitutional and illegal acts of the preceding Stuart reigns, it goes on to enact as follows:—

(1) The suspending power, when exercised by the Crown without the assent of Parliament, declared illegal;
(2) The dispensing power, as of late exercised, declared illegal;
(3) Levying money by prerogative prohibited;
(4) The subjects have a right to petition the Crown, and all commitments for so petitioning declared illegal;
(5) Raising or maintaining a standing army within the kingdom in time of peace declared illegal, if done without the assent of Parliament;
(6) Freedom of speech in Parliament secured;
(7) Excessive bail, excessive fines, etc., etc., discouraged; and
(8) The Protestant succession to the Throne provided for. (See now ACT OF SETTLEMENT.)

Bill of Sale is a deed assigning personal property.

A bill of sale of ordinary chattels by way of absolute assignment is not very common, except in cases where the thing sold is of some importance, as where a sheriff sells goods under an execution.

A bill of sale is the usual, and in the case of registered ships the only, mode of transferring ships; a bill of sale of a registered ship, under the Merchant Shipping Act, 1894, is to be in the form given in the Act, or as near thereto as possible (s. 24), specifying the number and date of registry, the description of the ship, etc.; it is under seal and (s. 26) must be registered. Formerly bills of sale of ships were divided into two kinds,—the grand bill of sale, which conveyed the ship from the builder to the purchaser or first owner, and the ordinary bill of sale by which any subsequent transfer was made; but these terms are not now used.

The most usual kind of bill of sale, and that to which the term is in practice applied, is a bill of sale of chattels (*e.g.*, furniture, horses, stock-in-trade, etc.) by way of mortgage to secure a debt, being an assignment with a covenant for reconveyance on payment of the debt, similar in most respects to a mortgage of land. It is with reference to these instruments that the Bills of Sale Acts are of importance; they were passed to prevent frauds "committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property" which really belongs to someone else. The Bills of Sale Act, 1878, provides in effect that unless a bill of sale, given (see s. 4) as security for money, together with an affidavit verifying its execution, is filed in the Central Office of the Supreme Court within seven days from its execution, it shall be void against the trustee in bankruptcy or liquidation of the grantor, against his assignees for the benefit of his creditors, and against his execution creditors, so far as regards any of the goods which remain in his actual or apparent possession. But this still left an unregistered bill of sale valid as between grantor and grantee. The Bills of Sale Act (1878) Amendment Act, 1882 (which—see s. 4—relates only to bills of sale given as securities for money), now provides by s. 8 that a bill of sale given as security for money shall be wholly void unless it sets forth the consideration for which it was given and unless it is registered; by s. 9, that such a bill must be in the form given in the schedule to the Act; by s. 4, that such bill must have annexed to it a schedule of the property comprised therein; by s. 10, that such bill must be attested by a credible witness in substitution for the solicitor required by s. 10 (1) of the Act of 1878; by s. 7, that seizure of the property comprised in such bill can be made only on default in payment of the sum secured or the non-observance of covenants and agreements, or on bankruptcy, distress, fraudulent removal, failure to produce receipts, etc., or execution; and by s. 12, that any such bill given in consideration of a less sum than £30 shall be void. The Act of 1882 (see s. 3) does not apply to bills given otherwise than by way of security for money.

Except as against the grantor, a bill of sale (unless it be of growing crops, fixtures, etc.) is void if the grantor was not at the time of its execution the "true owner" of the chattels comprised therein (Act of 1882, ss. 5, 6) "True owner" means either the legal or the equitable owner.

The Act of 1878, like the earlier Acts which it replaced, was passed for the protection of creditors: the Act of 1882, on the other hand, was passed for the protection of persons giving bills of sale.

Bills of sale comprising the same chattels

have priority in the order of the date of their registration (Act of 1882, s. 10).

Bill of Sewers. The popular title of the statute 23 Hen. 8, c. 5, which, it may be noted, dealt with large schemes of drainage and with the prevention of floods, and had nothing to do with sewers in the modern sense.

Bill of Sight. The importer of goods, if unable to make a perfect entry thereof, may, in order to get them landed, make an entry by "bill of sight" in the form No. 4 in Sch. B. to the Customs Consolidation Act, 1876. See ss. 58-62 of that Act. See ENTRY.

Bill of Stores. A document for the entry duty free into the United Kingdom of dutiable goods which have been exported therefrom within the five years preceding their re-importation. See the Customs and Inland Revenue Act, 1879, s. 6.

Bill of Sufferance. A licence issued by the customs to a merchant under the repealed statute 14 Car. 2, c. 11, authorising him to trade between English ports without paying customs.

Bill Quia Timet was a proceeding in the old Court of Chancery,—which subsequently represented by the action in the nature of a bill *quia timet*,—brought for the purpose of anticipating and providing against an apprehended liability, or for the purpose of anticipating and preventing an apprehended wrongful act. Such an action could be maintained only where the plaintiff proved imminent danger of a substantial kind, or proved that the apprehended injury, if it happened, would be irreparable. Injunction is now the remedy.

Bill to Establish Will. This was a proceeding in the Court of Chancery, having for its object to establish the validity of wills of real estate as against the heir-at-law. The devisee was plaintiff, or with his consent the heir-at-law might be plaintiff. This kind of proceeding fell into disuse after the Court of Probate Act, 1857, s. 62, had enacted that where a will disposing of real as well as of personal estate is proved in solemn form, or is established by a decree in contentious proceedings, the probate shall be conclusive proof of the validity of the will as against the heir, devisee or other person interested in the realty if (*ib.*, s 63) he had been cited or made a party or if he had derived title through a person so cited or made a party (*ib.*, s. 63). Now, under the Land Transfer Act, 1897, s. 1, probate will be granted of a will dealing with real estate only.

Bills in Eyre. These were processes by which civil proceedings were instituted before the Eyre (q.v.). They were usually written in Anglo-French (a few are in Latin), and set out without technicalities the facts alleged by the complainant. There were no prescribed forms. They could be used in any state of facts—unlike writs, which are rigidly confined to particular matters or to those that were *in consimili casu*—and any remedy which the facts required could be obtained upon them. Upon these bills there was an equitable jurisdiction foreshadowing the later jurisdiction of the Court of Chancery.

Bills of Mortality. These were weekly returns of deaths in the parishes of the city of London. They began in 1592. In 1605, 1626, and 1636 the area to which they related was increased. The area which finally was "within the Bills of Mortality" was selected as that for various Acts relating to paving and building. The bills ceased in 1842, as the modern system of registration of births and deaths was then in operation and had made them unnecessary.

Bill-sticking. Sticking a bill on the property of another without his consent is actionable. So also is sticking a bill over one already posted, unless the second bill be posted in exercise of a right; and, moreover, the sticker of the second bill may be summarily convicted, under the Criminal Justice Administration Act, 1914, s. 14 (1), of malicious injury if the damage does not exceed £20.

In the metropolitan police district, it is an offence, punishable on summary conviction with a fine not exceeding 40s., to paste bills on the property of another; and a constable may arrest without warrant if the offence is committed in his view (Metropolitan Police Act, 1839, s. 54 (10)). Elsewhere there is no general Act, but there are many local Acts dealing with the subject.

As to bill-sticking in London on lamp-posts, buildings, etc., formerly belonging to metropolitan boards and vestries, but now transferred to the metropolitan boroughs which have replaced those bodies, see the Metropolis Management Amendment Act, 1862, s. 90; as to bill-sticking on letter-boxes, etc., see the Post Office Act, 1908, s. 62; as to sticking bills which are indecent, see INDECENT ADVERTISEMENTS; and as to the rating of hoardings, etc., used or let for the display of bills, see the Advertising Stations (Rating) Act, 1889.

Billet; Billeting. For the purposes of the Army Act, Part III., to billet means to quarter soldiers and their horses in the house of a subject; and a billet means the document

authorising such quartering. Colloquially, a billet means the house in which soldiers are quartered. Under the Army Act, only licensed premises, inns and livery stables can be used for billeting.

Billeting had been declared illegal by the statutes 3 Car. 1, c. 1 and 31 Car. 2, c. 1. When a standing army had been authorised by Parliament in 1689, billeting was legalised by various Mutiny Acts which are now represented by the Army Act, as re-enacted and sometimes (as in 1913) amended by the Army (Annual) Act.

The Navy Billeting, etc., Act, 1914, provides that when the naval reserves have been called out, officers and men of His Majesty's naval forces may be billeted in manner provided by the Army Act, Part III., as regards officers and men in the Army.

Billiards and Bagatelle. Every house, room or place, other than premises comprised in a publican's licence, where a billiards table, bagatelle board or instrument used in any game of the like kind, is kept for public playing requires a billiards licence, and any person keeping such house, etc., without such licence is liable on summary conviction to a penalty not exceeding £10 or, at the discretion of the Court, to one month's imprisonment, or may be indicted for keeping a common gaming house (Gaming Act, 1845, s. 11; Finance (1909-10) Act, 1910, s. 52).

Billiards licences, which run for a year from each 5th April, are granted and renewed at the annual licensing sessions or any adjournment thereof and may be transferred at the transfer sessions (Gaming Act, 1845, s. 10). There is no appeal from a refusal of justices to grant or, it would seem, to renew or transfer a licence. It would seem (see the Licensing (Consolidation) Act, 1910, s. 3) that the whole body of justices and not merely the licensing justices are the licensing authority; but in practice the matter is left to the licensing justices. Applicants for billiards licences must give the same notices as applicants for licences for the sale of intoxicating liquors (Licensing Act, 1872, s. 75). A publican requires no billiards licence. Every holder of a billiards licence is liable to the same penalty as if he kept an unlicensed billiards room, unless he keeps displayed a notice "Licensed for Billiards" (Gaming Act, 1845, s. 11). Any holder of a billiards licence who violates any of the conditions thereof or permits gaming, and any publican, being the holder of a billiards licence, who permits play on any public billiards, etc., table, or keeps open the room containing such table, between 1 a.m. and 8 a.m. or on Sunday, Christmas Day, Good Friday, or any day of public fast or thanksgiving, and any publican who permits play at any time when wine, spirits or beer cannot be sold on his premises, is liable on summary conviction to a penalty of £10 for a first offence and of £20 for any subsequent offence (Gaming Act, 1845, ss. 12, 13; Licensing Act, 1872, s. 75; Licensing (Consolidation) Act, 1910, s. 79).

A billiards licence forbids the consumption of any exciseable liquor in a licensed billiards room; but beer is not such a liquor The holder of a billiards licence permits gaming if he allows billiards or bagatelle to be played for money or money's worth.

The police have an unlimited right of entry into licensed billiards rooms, and any refusal to admit the police is punishable as a breach of the conditions of the licence (Gaming Act, 1845, s. 14). A corresponding right exists as regards any public billiards room on a publican's premises (*ib.*).

Bind. See STICK OF FELS.

Bind Days. See PRECARIAE.

Binding Tuesday. See HACK-TIDE.

Birds. Birds, like other animals, are classified at common law as (1) domestic and (2) wild or *ferae naturae*.

Wild birds, but only to the extent stated at ANIMALS, FERAE NATURAE, as well as domestic birds, are the subject of larceny at common law, and where the stealing of house pigeons is not larceny at common law it is punishable under the Larceny Act, 1861, s. 23. The unlawful wounding, maiming or taking of birds ordinarily kept in confinement or for any domestic purpose is punishable under the Malicious Damage Act, 1861, s. 41; but it is to be observed that if a man kills trespassing fowls or pigeons in the honest belief that such killing is necessary to protect his crops or other property, he commits no offence.

Wild birds are in law classified as SWANS, GAME, other WILD BIRDS, all of which see. Other titles relating to birds are: ANIMALS, FERAE NATURAE; ANIMALS, LIABILITY FOR; CLOSE SEASONS; CRUELTY TO ANIMALS; POISONED GRAIN OR FOOD.

Birretum; Birettus. Ancient names of the cap or coif worn by judges, sergeants-at-law, which still survives in the "black cap" (q.v.). The words are cognate forms of "biretta," the cap worn by Roman Catholic, and nowadays by Anglican, clergymen.

Birth, Concealment of. "If any woman shall be delivered of a child, every person who

shall by any secret disposition of the dead body of the child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof " shall be guilty of a misdemeanour (Offences against the Person Act, 1861, s. 60).

To constitute the offence it must be proved: (1) That the woman has been delivered of something more than a *fœtus* incapable, at the time of delivery, or being born alive; (2) that a body has been found and has been identified as that of the child to whom the charge relates—unless in a case where the identification of the body is shown to have been impossible by reason, for instance, of its having been cremated; (3) that there was some definite act of concealment as distinguished from mere denial of the birth or mere abandonment of the body; and (4) that the child was dead when concealed.

The section above cited goes on to say: " If any person tried for the murder of a child shall be acquitted thereof, it shall be lawful for the jury . . . to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the body of such child, endeavour to conceal the birth thereof," whereupon the accused may be sentenced as for concealment of birth. It will be noted that such finding of a jury is with regard to " the body," not " the dead body," of the child. Such finding is also punishable if a jury acquit of infanticide (Infanticide Act, 1922, s. 1 (4)). See INFANTICIDE.

Birth, Notification of. In areas where provisions of the Notification of Births Act, 1907, have been put in force either by the Ministry of Health (s. 3) or by the local authority with the consent of the Ministry (s. 2) every birth which takes place after the twenty-eighth week of pregnancy must, within six hours after the birth, be notified, whether the child be born alive or born dead, to the local medical officer of health, by the father if he at the time of the birth is actually residing in the house where it takes place or by any person in attendance upon the mother at or within six hours after the time of the birth.

The Act is adoptive (q.v.), and applies only where it has been put in force as above indicated.

Birth, Proof of. The effect of the Births and Deaths Registration Act, 1836, ss. 35, 37, and 38, the Births and Deaths Registration Act, 1837, s. 8, and the Births and Deaths Registration Act, 1874, ss. 1-8, 32, 38, is as follows:—The fact and date and (if the Registrar-General had directed that the place of birth should be entered) the place of birth within England or Wales, the Christian name and sex of the person born, the names of the parents, the rank or profession of the father, are conclusively proved by a copy of the entry in the register-book of births, certified by the registrar or registering officer before the book is filled up; or by the superintendent registrar after the book has been filled up and is in the custody of the superintendent registrar; or by a certified copy, sealed with the seal of the general office of registry after the book has been sent to that office; provided that such entry is signed by an informant within the meaning of the said Acts and, in the case of births since 1874, is signed by the superintendent registrar if the registration took place more than three and not more than twelve months after the birth, or is made with the authority of the Registrar-General if the registration took place more than twelve months after birth.

Such a copy of the entry does not, however, prove anything with regard to the person whose birth is in question until that person has been proved to be the person registered in the entry.

Births, Registration of. See REGISTRATION.

Bishop. A bishop is an ecclesiastical dignitary. His office is the first of the three orders comprised in Holy Orders (q.v.), the others being those of priest and deacon. He is the chief of the clergy within his diocese, subject to the archbishop of the province in which his diocese is situated; most of the bishops are also members of the House of Lords (q.v.). Every bishop, and also every archbishop, is elected by the dean and chapter of the bishopric on the nomination of the Crown, the election being a mere form. No man under thirty can be made a bishop (3 & 4 Edw. 6, c. 12; 5 & 6 Edw. 6, c. 1; 14 Car. 2, c. 4). See CONGÉ D'ÉLIRE; LETTERS MISSIVE.

The principal powers and duties of a bishop consist in ordaining priests (q.v.) and deacons (q.v.), licensing curates, consecrating churches, and visiting the clergy in his diocese. (See VISITATION.) He is an ecclesiastical judge, but his principal jurisdiction is exercised by his chancellor (q.v.). He also has certain duties under the Church Discipline Act, 1840, and the Public Worship Regulation Act, 1874 (q.v.).

The term " suffragan bishop " (*suffragari*, to help) appears to have two meanings. Properly, it means a bishop consecrated to supply the place of the bishop of a see, when absent

therefrom: the duties of the suffragan being purely spiritual and confined to the conferring of orders, confirming, etc. The statute 26 Hen. 8, c. 14, created certain sees of suffragan bishops, and made provision for their appointment; and the Suffragans Nomination Act, 1888, empowers the Crown to change the sees of existing suffragans and to make towns other than those mentioned in the statute of Hen. VII. sees for additional suffragans. In addition to regularly appointed suffragans, former bishops of dioceses in England or the colonies frequently act as *quasi*-suffragans. In a less proper sense, all the provincial bishops are sometimes, with respect to the archbishop, called his suffragans. See ORDINARY; ECCLESIASTICAL COURTS; DEAN AND CHAPTER.

From very ancient times it had been the custom, when a bishop had become incapacitated through age or infirmity, to appoint a coadjutor bishop to assist him, but up to 1869 this was done without statutory authorisation. The Bishops' Resignation Act, 1869, ss. 3-14, provides for the appointment of a bishop coadjutor in the case of any archbishop or bishop who is incapacitated by reason of permanent mental infirmity, and enacts that the coadjutor to a bishop other than the Bishop of London, Durham or Winchester, shall have the right of succession to the bishop's see, and that the coadjutor to an archbishop, or to the Bishop of London, Durham or Winchester, shall have the right of succession to the see of any bishop or archbishop who may be translated to the see of the bishop or archbishop for whom the coadjutor had acted, or failing such translation shall have the right of succession to the see of the archbishop or Bishop of London, Durham or Winchester for whom he had acted. The same Act, by s. 2, provides for the resignation of any archbishop or bishop incapacitated by age or mental or physical infirmity. See BISHOPRICS.

Bishoprics. The Church of England is divided into the two provinces of Canterbury and York. The province of Canterbury comprises the bishoprics of Canterbury, London, Winchester, Bath and Wells, Chichester, Ely, Exeter, Hereford, Lichfield, Lincoln, Norwich, Rochester, and Salisbury, all of which had existed before the reign of Henry VIII.; those of Gloucester, Bristol, Peterborough and Oxford, founded in that reign; and the following dioceses founded since 1874—St. Albans (Bishopric of St. Albans Act, 1875); Truro (Bishopric of Truro Act, 1876); Southwell (Bishoprics Act, 1878); Southwark (Bishoprics of Southwark and Birmingham Act, 1904); Birmingham (*ib.*); Chelmsford (Bishoprics of Sheffield, Chelmsford, and for the County of Suffolk Act, 1913; S. R. & O., 1914, No. 145); St. Edmondsbury and Ipswich (Bishoprics of Sheffield, Chelmsford, and for the County of Surrey Act, 1913; S. R. & O., 1914, No. 146); and Coventry (Bishoprics of Bradford and Coventry Act, 1918; S. R. & O., 1918, No. 1172).

The Welsh bishoprics of St. Davids, Llandaff, Bangor and St. Asaph had from the year 1115 and down to the time when the Welsh Church Act, 1914, came into force in 1920, been part of the province of Canterbury; but under that Act they have ceased so to do. See WELSH CHURCH.

The province of York comprises the bishoprics of York, Durham, Carlisle, and Sodor and Man, all of which existed before the reign of Henry VIII.; Chester—which was erected in that reign; and the following dioceses erected since 1835—Ripon (Ecclesiastical Commissioners Act, 1836); Manchester (*ib.*); Liverpool (Bishoprics Act, 1878); Newcastle (*ib.*); Wakefield (*ib.*); Sheffield (Bishoprics of Sheffield, Chelmsford, and for the County of Suffolk Act, 1913; S. R. & O., 1914, No. 147); and Bradford (Bishoprics of Bradford and Coventry Act, 1918).

Bishops, Case of the Seven. A celebrated trial in 1688 of Archbishop Sancroft and six bishops, which arose out of the accused petitioning the king against an order of his directing to be read in all the churches a certain declaration of indulgence—previously declared illegal in Parliament. The action resulted in the acquittal of the bishops, and established the right of the subject to petition, and also asserted but did not finally establish the right of the jury to return a general verdict in prosecutions for libel, that is to say, to find, not merely whether the alleged libel had been published by the accused, but whether the alleged libel was or was not a libel. The right of the jury to so find was finally established in 1792. See FOX'S LIBEL ACT; PETITION, SUBJECT'S RIGHT TO; BILL OF RIGHTS.

Black Act. The popular title of the statute 9 Geo. 1, c. 22 (repealed in 1827), which was passed for the punishment of persons who with blackened faces had been destroying the deer in Waltham (now Epping) Forest, robbing warrens and fishponds, and cutting down trees, etc. It made such acts felony without benefit of clergy, and provided for the payment of compensation to persons whose property had been injured. See WALTHAM BLACKS.

Black Book of the Admiralty. This is a volume in which "the ancient statutes of the Admiralty" are engrossed in old French on vellum. It is believed to have been commenced in the reign of Edward III. and to have been completed in the reign of Henry VI. It was preserved in the Registry of the former Admiralty Court; but it disappeared about 1808 and was not recovered until 1873. It is now in the Admiralty Registry of the Supreme Court. It was edited in four volumes by Sir Travers Twiss in 1871-1876 as No. 55 of the Rolls Series.

Black Book of the Exchequer. Like the Red Book of the Exchequer (q.v.), this book appears to have been compiled, probably before 1215, by Alexander de Swereforde. It sets out many *cartae*, or charters, and other matters contained in the later Red Book. The original is in the Public Record Office. It was edited in 1728 by Thomas Hearne. A second edition appeared in 1774. So much of the book as relates to the Treasury of the Receipt is the *Liber Niger* proper; the part relating to the King's Remembrancer's department is called the *Liber Niger Parvus*.

Black Cap. This is a square cap worn over the wig by a judge of the High Court when passing sentence of death and on State occasions. See BIRRETUM.

Black Game. The dark coloured birds, also known as blackcock, found, like grouse (which are of a reddish colour), on land covered with heather. They are included in the term "game" (q.v.).

Blackleg. To call a man a blackleg, meaning thereby a man who habitually wins money (at cards, etc , or betting) by dishonest practices, is actionable. But it is not actionable, in the absence of proof of special damage, to call a man a blackleg, meaning thereby a man who continues to work or accepts work at a factory, etc., in which there is a strike, or who has refused to join a trade union, or who has otherwise made himself obnoxious to a union.

Black List. This is a popular title of a list, kept by the police, of habitual drunkards against whom orders have been made, under the Licensing Act, 1902, s. 6, to the effect that they shall not obtain any intoxicating liquor in any licensed premises or in any club during the currency of the orders.

In the wider popular sense the expression means any list of persons which indicates them as persons with whom business dealings are undesirable. The list of defaulters on the Stock Exchange is such a list. So also is *Stubbs' Gazette* and other similar periodical publications which are issued in order to protect traders by communicating to them the names of persons to whom, by reason of their having been adjudicated bankrupt or having had judgments recorded against them, it would appear unsafe to give goods on credit. The publication of such lists is not actionable if the words used are true and if they do not convey some thing which is false and if the list is published *bona fide* for the purpose of informing persons whose business makes knowledge of the facts important to them.

Trade unions frequently publish lists of men who have taken the place of strikers or who have otherwise come into collision with the union; and employers who have formed a ring for the purpose of keeping up prices have sometimes published a list of traders who have sold at less than the price fixed by the ring Such lists are in the nature of black lists. The publication of such lists may or may not be actionable even though the facts stated are true. It is certainly actionable if it is done, not merely in order to give to the members of the union or the ring information as to the facts, but in order to hold up the offending workman or firm to public odium.

Blackmail. Originally this was equivalent to *niger redditus*, rent payable in cattle, labour or produce, as distinguished from rent payable in corn. See ALBA FIRMA.

Subsequently it meant the toll levied by freebooters along the Scottish border from persons exposed to their depredations who were willing to pay for immunity from plunder. The paying or receiving of blackmail was made felony without benefit of clergy by the statute 43 Eliz. c. 13, s. 1.

At present, it means the attempt to obtain money, etc., by threats of injury to person or property, or by threats to accuse of any offence punishable with death or with not less than seven years' penal servitude, or of rape or attempt to commit rape or of any infamous crime (q.v.); or by threats of exposure of some discreditable incident alleged, whether truly or falsely, to have occurred in the life of the person against whom the threat is made, or of some other person, whether living or dead. Such offences are now dealt with in the Larceny Act, 1916, ss. 29, 31.

Black Rod. Jacob wrote in 1739: "The Gentleman Usher of the Black Rod is Chief Gentleman Usher to the King: He belongs to the Garter and hath his name from the Black Rod, on the top whereof sits a lion in gold, which he carrieth in his hand. He is called in the Black Book, fol. 255, *Lator virgae*

The keeper of a boarding-house is under no obligation to receive and lodge in his house and entertain any person whether a traveller or not; he has no lien upon the goods of boarders for any money due in respect of the boarding; he is not liable to a boarder for goods lost or stolen within his house unless there is negligence either upon his part or on the part of a servant to whom he has delegated the duty of taking reasonable care of the goods of the boarder, by which negligence is meant the omission to take such care as a reasonable owner would take of his own goods. As regards each of these points the keeper of a boarding-house differs from an innkeeper (q.v.).

An agreement to board at a boarding-house need not be in writing.

The use of a house as a boarding-house is an infringement of a covenant not to use except as a private residence.

Board of Control. See COMMISSIONERS IN LUNACY as to the origin of this body. The board is charged with the general superintendance of matters relating to the supervision, protection and control of persons mentally defective (Mental Deficiency Act, 1913, s. 21), but this does not affect the powers with regard to lunatics exercised by the Lord Chancellor or the Commissioners in Lunacy or the judge or masters in lunacy or by any other persons. The powers and duties of the Commissioners in Lunacy were, however, transferred to the board as from 1st April, 1914, by s. 65 (1) of the same statute. Those duties are: To visit asylums (Lunacy Act, 1890, s. 187) and licensed houses (*ib.*, s. 191) and make rules for the management thereof (*ib.*, s. 226), to see patients (*ib.*, s. 194), grant licences for private asylums in the counties of London and Middlesex, in every place within seven miles of the Cities of London and Westminster and the borough of Southwark, and in certain other places in Surrey, Kent and Essex (*ib.*, s. 208, Sched. III.), and to report to the Lord Chancellor and to Parliament (*ib.*, s. 162).

Board of Education. See EDUCATION, BOARD OF.

Board of Green Cloth. This was more formally called the Counting House of the King's Household (*Domus Computus Hospitii Regis*). It was, as Jacob wrote in 1739, "for daily taking the accounts of all expenses of the household, making provisions and ordering payment of the same; and for the good government of the King's household servants and paying the wages of those below stair"; and that is still a substantially accurate description of its functions. It consists of the Lord Steward, the Treasurer, the Comptroller and the Master of the Household, with their clerical assistants.

Anciently it had further functions: (1) To keep the peace within the verge (q.v.); (2) To make provision for the household according to the laws and statutes of the realm; (3) To maintain courts of justice within the verge. But the duty of keeping the peace within the verge is now performed by such constables of the Metropolitan Police as are sworn, pursuant to the Metropolitan Police Act, 1833, s. 7, to act as constables within the royal palaces or ten miles thereof. Making provision for the royal household according to the laws and statutes of the realm meant exercising the royal right of purveyance (q.v.), which is now obsolete; and the only remnant of any separate jurisdiction now existing with regard to the royal palaces is to be found in the "verge coroner," or coroner of the King's household, who continues to be appointed by the Lord Steward, pursuant to the Coroners Act, 1887, s. 29, with exclusive jurisdiction to hold inquests on bodies lying within any of the King's palaces or any house where His Majesty is "demurrant and abiding" in person or within the curtilage (q.v.) of any such palace or house. The royal palaces in London are made parts of the various Metropolitan Police Court Districts formed by the Orders in Council (made pursuant to the Metropolitan Police Courts Acts, 1839 and 1840), of which a list is given in Appendix XIX. to the 1893 Index of Statutory Rules and Orders.

Board of Health. Under the Public Health Act, 1848, the Local Government Act, 1858, and other Acts amending those Acts, local boards of health were constituted for the better securing the public health, and who for that purpose exercised certain powers as to sewers, drains, buildings, slaughter-houses, etc.

The Acts of 1848 and 1858 were repealed by s. 343 of the Public Health Act, 1875, and with them went the boards of health, whose functions are now performed by the machinery provided by the Act of 1875.

Board of Trade. This is defined by the Harbour Transfer Act, 1862, s. 2, and by the Interpretation Act, 1889, s. 12 (8), as "the lords of the committee of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations."

Before 1782 there existed a body known as the Board of Trade and Plantations (see

PLANTATIONS). This body was abolished by the Civil Service and Secret Service Money Act, 1782 (22 Geo. 3, c. 82), s. 1, and its functions were transferred by s. 15 to such committee or committees of the Privy Council as His Majesty should appoint to act during pleasure. Such a committee was appointed by Order in Council of 11th September, 1782. Such of its functions as related to the plantations have long since been transferred (see SECRETARY OF STATE) to other departments. The committee, as regulated by the Order of 1782 and subsequent Orders in Council, still exists in theory: but it never meets, and its functions are discharged by the president (known as the President of the Board of Trade), who, in fact, is the Board of Trade, and by the Parliamentary Secretary.

The President of the Board is appointed by warrant under the sign manual (Board of Trade (President) Act, 1826) and must take the oath of allegiance and official oath (Promissory Oaths Act, 1868, s. 5). He receives a salary of £5,000 a year (Board of Trade Act, 1909), which does not disqualify him for membership of the House of Commons (Board of Trade (President) Act, 1826). He is always a member of one House of Parliament or the other and a member of the Cabinet.

Before 1867 there was a vice-president of the Board, a permanent official with a salary of £2,000 a year, appointed pursuant to the statute 57 Geo. 3, c. 66. His office was abolished by the Board of Trade (Parliamentary Secretary) Act, 1867, which provided that he should be replaced by an officer to be called the Parliamentary Secretary to the Board of Trade, capable of being a member of Parliament and receiving a salary of £1,500 a year.

The Overseas Trade Department (Secretary) Act, 1918, s. 1, provides that the Board of Trade may, in conjunction with the Secretary of State for Foreign Affairs, appoint a secretary to be called the Secretary of the Department of Overseas Trade (Intelligence and Development), to discharge the functions of a Parliamentary Secretary both to the Board and to the Secretary of State. He is to be paid not more than £2,000 a year (*ib.*) and may be a member of the House of Commons (*ib.*).

The functions of the Board were originally consultative: but they gradually became almost entirely administrative. The first step in the process took place in 1840, when the Board—which then was still called the " lords of the committee of Her Majesty's Privy Council appointed for Trade and Foreign Plantations "—was by the Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), empowered to exercise various administrative functions with regard to railways. Subsequently it was entrusted, under a very large number of statutes, with administrative powers as to railways, merchant shipping, patents, weights and measures, bankruptcy, joint stock companies, gas, electric light, harbours, lighthouses, etc. Except agriculture—which had a board of its own—there was, down to 1916, scarcely an industry with which the Board of Trade was not directly or indirectly concerned. Upon the establishment in 1916 of the Ministry of Labour (q.v.) a number of the powers and duties of the Board of Trade were transferred to that body.

All the powers and duties of Government departments—including those of the Board of Trade—with regard to (*a*) railways; (*b*) light railways; (*c*) tramways; (*d*) canals, waterways and inland navigation; (*e*) roads, bridges and ferries and vehicles and traffic thereon; and (*f*) harbours, docks and piers, are vested in the Ministry of Transport (q.v.) pursuant to the Ministry of Transport Act, 1919, s. 2. See OFFICE OF PROFIT.

Bocland; Bockland; Bookland. Before the Norman Conquest this meant land held of the king by book or charter, as opposed to folcland (q.v.) or laenland (q.v.). The custom of conveying land by written documents was of Roman origin and had been introduced into England by the Church. The bocland was folcland granted by the king with the consent of the witan (q.v.). At first such grants were made only to ecclesiastical bodies or, as would now be said, to ecclesiastical corporations, but subsequently they were made to laymen. Grants to laymen were expressed to be made for some religious purpose: but this was a mere matter of form. At first there seems to have been something in the nature of what in later times would have been called livery of seisin: but before the Conquest the lands passed by force of the book alone. The most usual estate in bocland corresponded to our fee-simple: but occasionally it was what corresponded to a renewable lease for a life or lives. Bocland could be alienated *inter vivos* or disposed of by will, or mortgaged or put in settlement. These terms were not used, and merely indicate the nature of the dealings which were permissible. After the Conquest bocland disappeared and with it the right of dealing with land much as land is dealt with at present.

Bodily Harm. This, without more, seems sometimes to mean any injury which is merely technical or trivial, as distinguished from the more serious injury termed "actual bodily harm" (q.v.), or the still more serious injury termed "grievous bodily harm," which is mentioned in, for instance, the Offences against the Person Act, 1861, s. 11; but, as in s. 35 of the same Act, it can include actual bodily harm or grievous bodily harm. There is, however, no statutory definition of any of the three expressions.

Bodily harm may be the indirect result of the conduct of the accused, as where the accused entered a house at night and threatened to break open the bedroom of a woman, who, in consequence of his threat, jumped out of the window and was injured.

Body of Deed. This means the operative part of a deed as distinguished from the part containing recitals.

Boilary; Boilery. A place where things such as sugar or brine are boiled in the process of manufacturing them.

Boilers. Under the Boiler Explosions Acts, 1882 and 1890, notice of the explosion of any boiler, other than a boiler used for the king's service or exclusively for domestic purposes, must within twenty-four hours of the explosion be sent to the Board of Trade, who may enquire into the matter. Failure to report is punishable summarily with a fine not exceeding £20 (Act of 1882, s. 5).

The Act of 1882 (s. 2) defines a boiler as "any closed vessel used for generating steam or into which steam is admitted for heating, steaming, boiling, or other similar purposes."

A boiler used to heat offices or business premises upon which the owner does not reside and also to supply hot water for the purpose of cleaning the offices and for the household purposes of a resident caretaker has been held to be used "exclusively for domestic purposes."

Boiling to Death. Under the statute 22 Hen. 8, c. 9, this was the punishment of murder by poison: but seventeen years afterwards the statute 1 Edw. 6, c. 12, enacted that murder by poisoning should be punishable in the same manner as other murder: and this has ever since been the law.

Boldon Book or **Bolden.** A survey or account of the county of Durham, compiled in 1183 at Boldon, a village near Sunderland, by order of Hugh Pudsey, nephew of King Stephen. The original has disappeared; but two copies, dating from about 1400, are in the possession of the cathedral authorities at Durham, and another copy of later date is in the Bodleian Library. The book was edited, with a translation and notes, by Mr. W. Greenwell in 1852 as No. 25 of the Surtees Society's Publications.

Bolts, Boltings. These were arguments of cases, in the halls of the Inns of Court, by students and barristers before courts consisting of an ancient, or bencher, and two barristers. They, like the moots (q.v.), were for educational purposes: but the bolts, unlike the moots, were conducted in private. Bolts are now obsolete. They were also held in the Inns of Chancery.

Bombardment. Continuous artillery fire upon a town or place for the purpose of destroying it.

There were supposed to be various rules of international law to the effect that only fortified places were to be bombarded and that even in them churches, hospitals, asylums, libraries, etc., were, if possible, to be spared: but these rules have proved of little value.

Bonæ fidei possessor in id tantum quod ad se pervenerit, tenetur (2 *Inst.* 285). (A possessor in good faith is only liable for that which has come to his hands.) This maxim is of no general application. It is cited by Coke only as being the ground of the provision "chescun respoigne de sun tens" (everyone shall answer for his time) contained in the Statute of Gloucester, c. 1, and relating to the assise of novel disseisin.

Bona fides—"good faith"; *bonâ fide*—"in good faith," that is, honestly, without fraud, collusion or participation in wrong-doing. The phrase "want of good faith" is chiefly used not so much to denote that kind of fraud which makes a contract or other transaction voidable as between the parties to it, as to denote that kind of collusion or knowledge which disentitles the party to set up a claim against a person who would otherwise be liable to him. Thus the general rule is that a person who takes a negotiable instrument (q.v.) in good faith for valuable consideration can sue the person liable on the instrument, notwithstanding a defect in the title of the person from whom he acquired it: if, however, he had notice of the defect in the title, then he would not have taken the instrument in good faith, and would be unable to sue on it.

The phrase "*bonâ fide*" is often used ambiguously: thus the expression "a *bonâ fide* holder for value" may either mean a holder for real value as opposed to a holder for pretended value, or it may mean a holder for real value without notice of any fraud, etc.

Bona fides non patitur, ut bis idem exigatur. (Good faith does not suffer the same thing to be exacted twice.) This is a maxim of the civil law which is quoted by Broom in connection with the maxim *nemo debet bis vexari*, etc.

Bona gestura. Good behaviour.

Bona notabilia. Before the creation of the Probate Court by the Court of Probate Act, 1857, wills were proved before the bishop of the diocese in which the property of the deceased was situated: if the deceased had *bona notabilia*, or chattels to the value of one hundred shillings, in two or more distinct dioceses, then the will was proved before the metropolitan of the province comprising the dioceses, or, if the dioceses were comprised partly in one province and partly in the other, then before the metropolitan of each province. Now, under ss. 3 and 4 of the Act, *bona notabilia* have ceased to be known to the law.

If a person, while on a journey, happened to die outside the diocese in which he lived, what he had with him up to the value of £5 was not *bona notabilia*.

Bona vacantia. Goods in which no one claims a property but the king; such as royal fish, shipwrecks, treasure trove, waifs, strays, etc. Where a person dies possessed of personal property, intestate, and leaving no next-of-kin, the Crown becomes entitled to all such property. Chattels, real or personal, vested in a person as a mere trustee upon private trust which has failed are as a general rule held by him as trustee for the Crown. This title of the Crown is in virtue of its prerogative, and in this respect differs from the title of the Crown to land by escheat.

Bona waviata. Waifs (q.v.).

Bond is a contract under seal to pay a sum of money, or a sealed writing distinctly acknowledging a debt, present or future; and when this is all, the bond is called a single bond—*simplex obligatio*—which is rarely met with now. A double or conditional bond is where a condition is added that if the obligor does or forbears from doing some act the obligation shall be void. Formerly such a condition was sometimes contained in a separate instrument called a defeazance (q.v.). The person who binds himself is called the obligor, and the person in whose favour the bond is made is called the obligee. The bond usually consists of (i) the obligation or operative part, by which the obligor binds himself to pay the money; (ii) any recitals which may be necessary to explain the nature of the transaction; and (iii) the condition, which sets out the acts on the performance of which the bond or obligation is to cease to be of effect. Thus in an ordinary sureties' bond for the payment of a debt, the obligation binds the sureties to pay a sum double the amount of the debt, and hence called the penalty: the recitals then explain the circumstances under which the bond is given, and the condition declares that in the event of the debtor paying the debt with interest, etc., on a certain day, the obligation shall be void, that is, the sureties shall no longer be liable for the debt.

Voluntary bonds are bonds given without valuable consideration. As to administration, bail, bottomry, Lloyd's, *post obit*, resignation and replevin bonds, see those titles.

Formerly the common law rule was that on non-performance of the condition of a bond on the day fixed the penalty was absolutely forfeited and recoverable by the obligee in full; but Courts of Equity gave relief against penalties on payment of the sum or damages actually due or sustained; and by the statutes 1 & 5 Anne, c. 16 and 8 & 9 Will. 3, c. 11, the obligee was prevented from recovering even at law more than the sum or damages actually due or sustained. At the present day a bond merely amounts to a covenant to pay a sum of money, and is adopted partly because the form is sanctioned by antiquity, and partly because it is sometimes more flexible than an ordinary covenant. A debt on a bond, like any other specialty contract, has no priority over simple contract debts in the administration of the estate of anyone who has died since 31st December, 1869 (Administration of Estates Act, 1869); a like rule obtains in bankruptcy; and at the present day almost the only advantages which a bond has over an ordinary contract to pay money are that in the case of a bond the period within which to bring an action is twenty years (Civil Procedure Act, 1833, s. 3) instead of six, and that a bond executed after 31st December, 1881, binds not only the personal but also the real estate of the obligee unless an intention to the contrary is expressed (Conveyancing Act, 1881, s. 59). But, on the other hand, a claim on a bond cannot form the subject of a special endorsement under R. S. C., Ord. 3, r 6.

Bonds are void if executed for a purpose which is illegal or immoral or against public policy, as, for instance, bonds to procure or to prevent marriage, or in consideration of future as distinguished from past cohabitation, or in restraint of trade.

Forgery of a bond is felony (Forgery Act,

1915, s. 2 (1) (b)); and so also is the larceny of a bond (Larceny Act, 1916, ss. 1, 46). The term "bond" is also applied to instruments of indebtedness issued by companies and governments to secure the repayment of money borrowed by them. Sometimes the bond is in the form of a promissory note (in which case it may also be called a debenture (q.v.)): sometimes it consists of an undertaking to pay the principal and interest, secured by a mortgage or hypothecation of the property of the company or government; sometimes a mortgage of this kind is contained in a trust-deed or a "general bond" by which the property is conveyed to trustees for the bondholders. A bond issued by a government cannot be the subject of an action against the government. See LLOYD'S BONDS; BREACH.

Bonded Warehouse. A secure place approved by the Commissioners of Customs and Excise, for the service of the public, for the deposit of dutiable goods upon which duty has not been paid.

Bond-land. In some places in Sussex, this means copyhold which descends to the youngest son as distinguished from soke-land; that is to say, copyhold which descends to the eldest. In some manors, such as Wadhurst, Framfield and Mayfield, where a tenant holds both bond-land and soke-land, both lands descend in whatever manner the lands to which he was first admitted are descendible, unless he was admitted to both together, in which case both descend as soke-land, that is to say, to his eldest son.

Boni judicis est ampliare jurisdictionem (*Chanc. Prec.* 329). (It is the duty of a good judge to extend his jurisdiction.) This maxim, as above quoted, is erroneous. The order of a superior Court which usurps jurisdiction will be reversed on appeal; and if an inferior Court pursues a like course, its order will be set aside upon *certiorari* or upon appeal. Lord Mansfield (1 *Burr.* 304) says that *justitiam* should be substituted for *jurisdictionem*: and this would make the maxim entirely in accordance with the *dictum* of Lord Abinger (9 *M. & W.* 318) that "the maxim of the English law is to amplify its remedies, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice."

Boni judicis est judicium sine dilatione mandare executioni (*Co. Litt.* 289*b*). (It is the duty of a good judge to order judgment to be executed without delay.) This maxim is cited by Coke only in connection with civil proceedings.

Boni judicis est lites dirimere ne lis ex lite oritur; et interest reipublicæ ut sit finis litium (4 *Rep.* 15). (A good judge disposes of cases once for all in order that one lawsuit may not arise out of another; and it is in the public interest that decisions should be final.)

Bonis non amovendis. A writ which formerly lay to the sheriff commanding not to permit one against whom a judgment had been obtained, and who had brought a writ of error (q.v.), to remove his chattels pending the decision of the Court.

Bono et malo, De. Writs of gaol delivery thus entitled were anciently issued for each particular prisoner who was awaiting trial at the assizes; but they have long been superseded by the general commission of gaol delivery (q.v.).

Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert (*Co. Litt.* 24). (A good judge decides according to justice and right, and prefers equity to strict law.) "I commend the judge," observed Lord Hobart, "that seems fine and ingenious, so it tend to right and equity; and I condemn them that either out of pleasure to show a subtle wit will destroy, or out of incuriousness or negligence will not labour to support, the act of the party by the art or act of the law" (*Hob.* 125).

Book of Common Prayer. See PRAYER BOOK.

Book of the Council, The. One of the Cottonian MSS. in the British Museum. It is a record from 1421 to 1435 of the minutes of the Privy Council. It is printed in No 31 of the Record Commission Series and commences at p. 286 of vol. 2 thereof: for further particulars, see vol. 7, p. 1 of No. 31, and Baldwin's *King's Council*, p. 391.

Boon-days. The days upon which a tenant was required to perform the service of bedrip (q.v.).

Booty of War. Movable property captured by one belligerent from another. Formerly private property on land might be captured as booty of war, just as private property on sea can still be captured as prize (q.v.); but only military arms, equipment and stores are now liable to capture as booty of war. Booty of war goes to the Crown under the prerogative right. See CAPTURE.

Bordage. The tenure by which a *bordarius* (q.v.) held of his lord.

Bordarius. In Domesday this means a cottager.

Border Warrant. A warrant issued by a sheriff in Scotland for the arrest, within his jurisdiction, of any person alleged on the oath of another person resident in England to be

indebted to such other person. The warrant is long obsolete.

Any constable appointed for any one of the border counties of England or Scotland respectively, that is to say, the counties of Northumberland, Cumberland, Berwick, Roxburgh or Dumfries, may execute within any such counties the lawful warrant of any sheriff, justice of the peace, or other magistrate, for the apprehension of any person accused or convicted of a criminal offence committed, or for the recovery of any goods alleged to have been stolen, within the county for which such constable has been appointed (Police (Scotland) Act, 1857, s. 11). The sheriff mentioned in this section is of course the Scottish sheriff, whose functions differ from those of the English sheriff.

Bordlands. The demesne retained by lords for household purposes. Borlands, says Bracton, are *dominicum ad mensam*, that is to say, "table demesnes." A home-farm is the modern equivalent.

Bordlode. The service, due by some tenants anciently, of carrying timber to the house of their lord.

Bordman; Bordmannus. The same as *bordarius* (q.v.).

Bord Service. A tenure under which tenants of the temporalities of a see sometimes held at a rent payable towards the support of the bishop's table.

Borough. This means a city or town with a corporation, consisting of a lord mayor, or mayor, aldermen, and councillors, who constitute the borough council. Every such town, except the City of London (q.v.), is subject to the Municipal Corporations Act, 1882. There are between three and four hundred boroughs in England. Any town may petition the King for a charter of incorporation, that is to say, a charter making it a borough; notice of the petition is given to the county council of the county and to the Ministry of Health; and the petition is referred to the Privy Council, who direct an enquiry at which evidence for and against the petition is taken. If the petition be approved, a charter of incorporation is granted, settling the constitution of the wards and the number of councillors. The town thereupon becomes a borough, with a common seal, the right to hold lands and the right to contract, sue and be sued by its name of the *Mayor, Aldermen and Burgesses of* ——.

The burgesses (q.v.) elect the councillors and two out of the three borough auditors. "A person shall not be qualified to be elected or to be a councillor unless he (*a*) is enrolled and entitled to be enrolled as a burgess; and (*c*) is seized or possessed of real or personal property or both to the amount or value, in the case of a borough having four or more wards, of £1,000, and in the case of any other borough, of £500, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of £30, and in the case of any other borough of £15" (Municipal Corporations Act, 1882, s. 11, as in part repealed by the Representation of the People Act, 1918, s. 47, Sched. 8).

The councillors hold office for three years, and one-third of their number retire annually. The councillors elect the mayor annually. They also elect the aldermen, whose term of office is for six years, and half of whom retire every three years. The mayor and the aldermen must be, or be qualified to be, councillors. If a councillor is elected an alderman, he vacates his seat as councillor. The other officers of all boroughs are the town clerk and the treasurer, elected by the councillors, and a third auditor who is appointed by the mayor.

There are over a hundred boroughs each of which has a separate court of quarter sessions. Each such borough has a recorder and a clerk of the peace, and, generally, a separate coroner.

No woman is now disqualified for any office in a borough by reason of her sex (Sex Disqualification (Removal) Act, 1919).

Metropolitan boroughs have replaced the vestries and district boards of the metropolis under the London Government Act, 1899, but, although called boroughs, they are governed by that Act and not by the Municipal Corporations Act, 1882.

As to boroughs, see also BURGESS; COUNTY; COUNTY BOROUGH; COMMISSION; RECORDER; WARDS.

Borough Council. The mayor, aldermen, and councillors of a borough.

Borough Courts. "Borough civil court means an inferior court of record for the trial of civil actions which by charter, custom or otherwise, is, or ought to be, holden in a borough, but does not include a county court." (Municipal Corporations Act, 1882, s. 7.) There are about two hundred of these courts. They are regulated by ss. 175-188 of the Municipal Corporations Act, 1882; s. 175 provides that the recorder of each borough shall in most cases be the judge. These courts are now of little importance, the tendency being to transfer business from them to the County Court; only

about twenty of them ever sit. Compare BOROUGH SESSIONS.

Borough English. This is a custom under which the youngest son inherits land to the exclusion of his elder brothers. The name appears to have arisen from a case from Nottingham, tried in 1327. That town consisted of the English borough (Burgh Engloys) and the French borough (Burgh Frauncoyes). It was brought under the notice of the court that in the English borough this custom prevailed, although in the French borough the ordinary rule of primogeniture existed. The custom would appear to have existed long before 1327; but the custom did not apply to lands of freehold tenure, with which alone the king's courts had been accustomed to deal. The custom affected lands held in socage (q.v.) or those of burgage (q.v.) tenure, both of which tenures have in the course of time become practically indistinguishable from freehold tenure, except in the rare cases in which particular lands are affected by the custom of Borough English. The custom is still occasionally found in rural manors.

In a special form of Borough English the land descended to the youngest of the sons of the whole blood to the exclusion of a younger son of the half-blood; but since the enactment of the Conveyancing and Law of Property Act, 1833, s. 9, the half-blood and the whole blood have had equal rights.

The custom had nothing whatever to do with the fabulous *jus primæ noctis* (q.v.).

Borough Fund. "The rents and profits of all corporate land, and the interest, dividends and annual proceeds of all money, dues, chattels and valuable securities belonging or payable to a municipal corporation, or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (except where and so far as the application thereof is otherwise provided for) shall go to the borough fund." (Municipal Corporations Act, 1882, s. 139.) S. 140 specifies, by reference to sched. 5, the payments which may be made out of the fund. Speaking generally, they are the administrative expenses of the borough, such as salaries of officers, &c. No payments may be made out of the principal moneys of the fund.

Borough (or Borrow) Head. See HEADBOROUGH.

Borougholder. This means sometimes borsholder (q.v.), and, at other times, one holding by burgage tenure.

Borough Reeve. See REEVE.

Borough Sessions. The popular title of the separate courts of quarter sessions held in many boroughs. See QUARTER SESSIONS; compare BOROUGH COURTS.

Borsholder. See HEADBOROUGH.

Borstal Institution. Borstal institutions are defined by the Prevention of Crime Act, 1908, s. 4, as "places in which young offenders whilst detained may be given such industrial training and other instruction, and be subject to such disciplinary and moral influences, as will conduce to their reformation and the prevention of crime." The first such institution was established in 1901 in part of the convict prison at Borstal, near Rochester; and this gave rise to the name.

Bote. The old writers use this as meaning estover, compensation, expiation, and repair. It is a form of the Anglo-Saxon *bot*. It occurs in various compounds such as brigbote, firebote, parkbote, manbote: see those titles.

Botiler of the King. A royal officer who, according to Fleta, had certain rights of getting wine for the use of the king out of every ship which came in laden with wine; see with regard to him the statute 25 Edw. III., stat. 5, c. 21. See BUTLERAGE.

Bottomry is an agreement entered into by the owner of a ship or his agent, whereby, in consideration of a sum of money advanced for the use of the ship, the borrower undertakes to repay the same with interest if the ship terminate her voyage successfully: it binds or hypothecates the ship and freight, or the cargo, for the performance of the contract, the debt being lost in case of the non-arrival of the ship. The instrument by which this is effected is sometimes in the shape of a deed-poll, and is then called a bottomry bill; sometimes in that of a bond. The instrument will be invalid if it appears to be intended as a security even in the event of the non-arrival of the ship. The most important case of borrowing money on bottomry is where the master of a ship is at a foreign port, and finds it absolutely necessary to obtain money to defray the expenses of supplies or repairs and can do so only by executing an instrument of hypothecation. The instrument must be for money to be advanced. It cannot be given to secure money which has been advanced already. And it can be given only where the owner, or more generally the master, has no other means of securing the money which is necessary for the completion of the voyage. The instrument, if valid, has precedence over all claims against the ship, freight or cargo, except for wages, or on a subsequent bottomry instrument, or a subse-

Queen Consort for Marriage. See NECESSARIES; RESPONDENTIA.

Bouche of Court. More popularly *Bouche au Court*. It was an allowance of provisions, wine and beer given by the king in mediæval times to the knights and others who attended him on military expeditions.

Bought and Sold Notes are documents which are usually delivered by brokers to their principals on the conclusion of a contract of sale and purchase, the bought note being delivered to the buyer, and the sold note to the seller. The notes should contain the names of both the contracting parties, the quantity of the article bought and sold, and the price if agreed upon. They should also substantially correspond with each other; for otherwise, where the same broker acts for both parties, the bought and sold notes do not constitute a binding contract, and where the same broker does not act for both parties, it will be a question for the jury by which note the parties intended to be bound. The notes constitute the original contract between the parties, and are the proper evidence, but not necessarily the only evidence, of it.

Every contract note for or relating to the sale or purchase of any stock or marketable security must be stamped as follows:

Where the value of the stock, etc.,				
is £5 and does not exceed £100				6d.
exceeds		and does not exceed		
£100	...	£500	...	1/-
£500	...	£1,000	...	2/-
£1,000	...	£1,500	...	3/-
£1,500	..	£2,500		4/-
£2,500	.	£5,000	...	6/-
£5,000	...	£7,500	..	8/-
£7,500	.	£10,000	.	10/-
£10,000	...	£12,500	. .	12/-
£12,500	.	£15,000	...	14/-
£15,000	..	£17,500		16/-
£17,500	.	£20,000	..	18/-
£20,000	...		...	20/-

(Finance (1909-10) Act, 1910, s. 77).

The broker not making and transmitting or not stamping, as provided by s. 77, a contract note is liable to a fine of £20 and cannot recover at law any commission in respect of the transaction for which the contract note should be given and stamped (*ib.*, s. 78). These provisions apply to contract notes for options, the stamps to be half of those above mentioned except where the option is a double option, in which case the stamps are to be at the full rate (*ib.*, s. 79).

Boundaries. A boundary is that imaginary line which divides two pieces of land from one another. The line is generally, but not necessarily, marked or indicated on the surface of the land by a wall, fence, ditch, or other object. Where land belonging to a private person adjoins the sea or a public tidal river, the boundary is usually the line of medium high tide, while, in the case of a non-tidal or private stream, the boundary between the adjoining estates is presumed *primâ facie* to be the *medium filum* of the stream. Ditches and fences between adjoining estates are also presumed to be party boundaries, and to belong to the owners as tenants in common. The same rule generally applies to a party wall (q.v.).

Every owner of land is so far liable to keep up a fence or other material boundary that he is liable for a trespass if he allows his animals to stray on to the land of his neighbour. There are, however, cases in which a person is absolutely bound to keep up a fence, or the like, between his own and his neighbour's land; such a liability may arise by prescription. A tenant is also bound, in the absence of an agreement to the contrary, to maintain the fences of the property demised to him, and if the demised land adjoins land belonging to himself, he is under an obligation to keep the boundaries distinct during the term.

Where there is a dispute between two adjoining owners as to the boundary between their lands, the question may, in a simple case, be determined by an action of trespass or recovery of land; but where the boundaries have been confused, so that it becomes necessary to establish old boundaries, to direct intermingled land to be separated, or an equivalent set out, or the like, the proper remedy is an action in the Chancery Division to ascertain the boundaries; and in such an action the Court now directs an inquiry at chambers instead of directing a commission to issue in accordance with the former practice. A landlord is also entitled to this remedy if the tenant has confused the boundaries of his own and the demised land.

If a mineowner trespasses on his neighbour's land by excavating beyond the boundary, he may be restrained by injunction; and for this purpose, in a case of suspected trespass by underground working, the Court will, if necessary, allow an inspection; that is, give the plaintiff leave to go on and into the land of the defendant and see whether he is really working under the plaintiff's land. See BARRIER.

As to the jurisdiction of the Ministry of Agriculture and Fisheries (q.v.) in respect of

boundaries, see the Inclosure Acts, 1845 to 1878. The jurisdiction of the Board extends not only to land in process of enclosure under the Acts, but also to any land which belongs to separate owners but which is intermixed or inconveniently subdivided. This jurisdiction had originally been vested in the Inclosure Commissioners, from whom it passed to the Land Commissioners of England in 1882 and finally to the Board in 1889.

Bound-bailiff. See BAILIFF.

Bounds. In the law of mines, the trespass committed by a person who excavates minerals underground beyond the boundary of his land is called working out of bounds. The person on whose land the trespass is committed may bring an action for damages in one of the common law Divisions of the High Court, or an action in the Chancery Division for an injunction and an account of the minerals taken: and, whichever course he adopts, he may obtain an inspection under R. S. C., Ord. 50, r. 3. See BOUNDARIES; BARRIERS.

Bounty. This word occurs in—

(I.) Bounty money, payable to the officers and crew of a King's ship (*a*) for matters connected with engagements with pirates; (*b*) for seizures under the Slave Trade Acts; (*c*) for seizures under the customs laws; and (*d*) for services in connection with merchant shipping.

Bounty money is to be distinguished from prize money (q.v.); prize salvage (q.v.), and salvage money (q.v.).

(II.) Bounty, or money, formerly paid as an inducement to enlist in the Navy or Army.

(III.) Bounties, or moneys, formerly paid to encourage imports or exports.

(IV.) The royal bounty, or grant, made in the case of the birth of triplets, or any larger number of infants, in wedlock at the one birth.

(V.) Queen Anne's Bounty (q.v.).

Bovata terræ. An oxgang (q.v.).

Bovill's Act. This was the popular title of the Petition of Right Act, 1860, and also of the statute 28 & 29 Vict. c. 86 (repealed and replaced by the Partnership Act, 1890). Sir William Bovill, M.P. 1857-1866 and Chief Justice of the Common Pleas 1866-1873, was largely concerned with the passing of both of the Acts which bear his name.

Bow-bearer. An officer of the forest whose duty it was to prosecute, at the Court of Attachment, offenders against the forest laws.

Bowkett Society. See BUILDING SOCIETY.

Bowling. The statute 33 Hen. 8, c. 9, s. 11, provided that artificers and servants should not play at "bowles or any other unlawful game" except at Christmas and then only in their master's house or presence, and that no person should play at "bowles" except in his garden or orchard. This enactment, which does not seem to have been enforced, except possibly immediately after it became law, was repealed by the Gaming Act, 1845, s. 1. Bowling is now, of course, a lawful game.

Bowyers. One of the City Companies. It was on their petition that the enactment against, amongst other things, bowling (q.v.) was passed. They made bows and arrows, which even in the sixteenth century were of military importance.

Boxing. A boxing contest with gloves, fairly conducted under recognised rules, is not illegal, and homicide in the course of such a contest is not manslaughter unless it results from a foul blow or one struck with the intention of causing serious injury. But a contest in which the men have to fight on until one is incapacitated from further fighting by exhaustion or blows is not a legal contest, and the fact that gloves are worn is immaterial, for in such case the contest is virtually a prize-fight (q.v.).

The holding of boxing contests, no matter how fairly conducted, is a nuisance, restrainable by injunction, if they attract large crowds and substantially affect the amenities of the neighbourhood in which they are held.

Boycotting. This means the system under which the life of a man is made unendurable and impossible by an organised refusal to have any dealings whatsoever with him. Theoretically boycotting is the spontaneous outcome of the feelings of the individuals concerned in applying it to any particular person; but in practice it is the effect of a well-grounded fear that anyone refusing to take part in the boycott will himself be boycotted or suffer injury to his person or property.

The system originated in the West of Ireland in 1880, the first victim being a land agent named Boycott.

As to the legal aspect of the matter, see COMBINATION; CONSPIRACY.

Bracery. An abbreviated form of embracery (q.v.).

Bracton. Henricus de Bracton is the author of a work entitled *De Legibus et Consuetudinibus Angliæ*, written during the reign of Henry III. He is said to have been a judge under that king. The work itself is a systematic exposition of the English law, being to some extent an adaptation of Azo's *Summa* to the Institutes of Justinian. It is a work

of great historical interest, and is still occasionally cited on obscure questions of law. The only complete editions until recent times were the folio of 1569 and the quarto reprint of 1640; a new edition, with an English translation, was published, 1878-1883, in six volumes, as part of the Rolls Series, by Sir Travers Twiss.

Professor Vinogradoff discovered in the British Museum a manuscript containing the materials from which Bracton composed his great work. These are notes of actual cases decided by the King's judges made, in all probability, from the official records themselves. The manuscript was edited by Professor Maitland and published in three volumes in 1887, under the title *Bracton's Note Book*. See BRITTON; GLANVILLE.

Branding. As to branding in connection with benefit of clergy and brawling, see those titles.

Under the statute 1 Edw. 6, c. 3—popularly known as the Statute of Vagabonds—any men and women who could work and would not work, and who had no income sufficient for their support, were to be "marked with a whott iron in the brest the marke of V," and to be adjudged a slave for two years, and to be made to work by "beating, cheyninge or otherwise." If such slave ran away, he or she was to be branded "on the forhed or the ball of the cheke with an hote iron with the signe of an S," and to be adjudged a slave for ever; and for a second running away the punishment was death as a felon. This statute was repealed by the Statute Law Revision Act, 1863, but it had been obsolete for hundreds of years. Under the statute 6 & 7 Will. & M., c. 17, s. 3, persons dealing in dippings or filings from the current coin of the Realm were liable, amongst other things, to be branded in the right cheek with a hot iron with the letter "R." But that enactment was repealed by the statute 2 & 3 Will. 4, c. 34, s. 1; the punishment of branding had been obsolete for long before then.

The so-called branding of deserters from the army and navy was in fact tattooing.

Brawling. This means creating a disturbance in a consecrated building or consecrated ground, and was originally applied only where such building or church belonged to the Church of England. The common law took no cognizance of the matter, and down to 1551 it was dealt with under the canon law. Under the statute 5 & 6 Edw. 6, s. 4, if any person, by words only, quarrelled, chided or brawled in a church or churchyard [of the Church of England], the ordinary (*i.e.* the bishop) was to suspend him, if a layman, *ab ingressu ecclesiæ*, and if a clerk in Holy orders, from the ministration of his office during pleasure; if any person in a church or churchyard proceeded to smite or lay violent hands upon another, he was excommunicated *ipso facto*; and, under s. 3, if he struck the person with a weapon, or drew any weapon with intent to strike, he was, on conviction by a jury, to have one of his ears cut off, or if he had no ears, to be branded with the letter "F" in his cheek, in addition to being excommunicated; but s. 3 of the Act was repealed by the statute 9 Geo. 4, c. 31, s. 1. (See EXCOMMUNICATION.) By the Ecclesiastical Courts Jurisdiction Act, 1860, the jurisdiction of the Ecclesiastical Courts over laymen for brawling was taken away, and all riotous, violent or indecent behaviour in any church or recognised place of religious worship, or in any churchyard or burial ground, was made a misdemeanor, punishable on summary conviction by fine or imprisonment. Nonconformists had, however, already been protected from brawling by the Places of Religious Worship Act, 1812, s. 12, which provided that disturbance of any religious service of Protestant Dissenters should be punishable on conviction at quarter sessions with a fine of £40; and under the Religious Disabilities Act, 1846, s. 4, the Act of 1812 had been extended to all meetings, assemblies or congregations whatsoever, of persons lawfully assembled for religious worship and the preachers, etc., officiating.

Breach is the invasion of a right or the violation of a duty. The word is used in a literal sense in such phrases as "breach of close," which is an old-fashioned name for the tort of breaking a man's close—in other words, trespassing on his land, more generally called trespass *quare clausum fregit* (see TRESPASS), also in "pound-breach" and "prison-breach" (see these titles).

More usually "breach" is applied to the violation of an obligation. Breach of a contract, promise or covenant is the failure to perform it (see PERFORMANCE); it converts the right under the contract, etc., into a right to obtain a remedy for the breach, generally a right of action (see REMEDY). What may be called a constructive breach is an act of the promisor which disables him from performance, or a refusal to perform before the time of performance arrives; as, if A. contracts to convey land to B at a future time, and, before the time arrives, conveys it to C., then B. may at once sue A. for breach of his contract.

Breach of promise of marriage gives rise to a right of action for damages, unless the breach

was justifiable, *e.g.* if the man, after making the promise, discovers that the woman is unchaste. The parties to such an action are competent to give evidence in it, but the plaintiff's testimony must be corroborated by some other material evidence. (Evidence Further Amendment Act, 1869, s. 2.) A promise to marry made by a person who is married and known by the promisee to be married is void as being against public policy, but an action can be maintained on a promise made by a person who is married but who is not known by the promisee to be married. A promise made by an infant is voidable, and to enable the plaintiff to sue there must be a new promise after the defendant has attained full age. It would appear that the fact that the defendant is unfit for marriage is no defence, although it goes in mitigation of damages.

An action for breach of promise can be brought only in the High Court (County Courts Act, 1888, s. 56), unless both parties agree to have it tried in the County Court (*ib.*, s. 64).

Down to 1754 the remedy—or one of the remedies—for breach of promise of marriage, where the proposed defendant was still unmarried, was by a suit in the Ecclesiastical Courts for specific performance of the contract by a celebration of marriage *in facie ecclesiæ* (see MARRIAGE); but the statute 26 Geo. 2, c. 33, s. 13, enacted that no such suit should be brought in respect of any contract of matrimony, whether *per verba de præsenti* or *per verba de futuro*, entered into after 25th March, 1754. That Act was repealed and replaced by the Marriage Act, 1823, 4 Geo. 4, c. 76, which (see s. 27) contains a similar enactment. The action of breach of promise, as we know it, though always available in point of law, practically dates from 1754. The article *Breach of Promise* in Jacob (1739) deals at considerable length with the cases in which an action lay for breach of a promise; but it does not refer to any action based upon a breach of a promise to marry. The King's Bench had, however, decided in 1674 that such an action lay.

Under the statute 8 & 9 Will. 3, c. 11, s. 8, in an action on a bond for non-performance of any covenant or condition, the plaintiff may assign (that is, specify) as many breaches as he pleases, and the jury shall assess the damages on such breaches as shall be proved at the trial, or if he obtains judgment in default of appearance, he suggests as many breaches as he likes, and a writ of inquiry issues to assess the damages. (See R.S.C. Ord. 13, r. 14 and notes thereto, and WRIT OF ENQUIRY.) The judgment will be entered up for the whole penalty, but is only allowed to be executed to the extent of the damages assessed; it stands as a security for further breaches, and if there shall afterwards be any further breaches, upon a *scire facias* by the plaintiff on the judgment, suggesting the further breaches, then the further damages will be assessed.

Breach of Privilege. Contempt of the High Court of Parliament, whether relating to the House of Lords or to the House of Commons, is a breach of privilege. Both branches of the Legislature act on the same grounds, both declare what are and what are not breaches of their privileges, when the question is raised, and both punish, by commitment or otherwise, as the Courts of law and equity do for contempt of court. Resistance to the officers of the Houses of Parliament has, in almost all cases, been treated as a breach of the privileges of Parliament. The presence of strangers is a breach of privilege, though permitted on sufferance; and, formerly, to take a note of any of the proceedings was a high act of contempt, although now the representatives of the Press are not only allowed to be present for that purpose but have a gallery to themselves in each House, and every accommodation is afforded them.

Breach of the Peace. Breaches of the peace are offences against public order. They are commonly divided into actual, constructive and apprehended.

Actual breaches of the peace include riotous and unlawful assemblies, riots, affrays, forcible entry and detainer, etc. (See those titles.)

Constructive breaches of the peace include the offences of sending challenges and provoking to fight, going armed in public without lawful occasion in such a manner as to alarm the public, etc. These are misdemeanours, punishable with imprisonment and other penalties.

An apprehended breach of the peace is where one man threatens another with bodily injury, or with injury to his wife or children, or where a man goes about with unusual weapons or attendance, to the terror of the people, or publishes an aggravated libel of another. In such a case the offender may be summoned before a justice of the peace, and bound over to keep the peace. (See ARTICLES OF THE PEACE). This may also be done in certain cases where a person has been convicted of a misdemeanor or felony, mainly under five Acts passed in 1861, the 24 & 25 Vict., cc. 96-100.

Breach of Trust is where a trustee does an act which is unauthorised or forbidden by the terms of his trust, or where he omits to do an

act which the trust required him to do. Thus, in general, a trustee commits a breach of trust when he employs trust funds in his own business, or when he invests trust funds in securities not authorised either by law or by the instrument creating the trust, or when he fails to call in and convert into money such parts of the trust property as are of a fluctuating or deteriorating kind.

A breach of trust is in the nature of a tort, and entitles the *cestui que trust* who has been injured to compel the trustee to make good the loss caused by it. There is even something penal in the relief given in some cases of breach of trust: thus where a trustee has employed trust funds in his own business, and has thereby made a profit, the *cestui que trust* is entitled to it, although the trust estate has not been injured. But where a trustee, although he has committed what is in law a breach of trust, nevertheless satisfies the Court that he has acted reasonably and honestly, and that he ought fairly to be excused, he may, under the Judicial Trustees Act, 1896, s. 3, be relieved from liability; and under the Trustee Act, 1888, s. 8, a trustee (or a person claiming through a trustee) against whom a claim is made in respect of trust property may, in the circumstances stated in that section, rely on the Statute of Limitations as a defence. Before these two enactments a trustee was liable for any breach of trust; and time never ran in his favour.

A *cestui que trust* is entitled to an injunction to restrain his trustee from committing a threatened breach of trust.

Where a breach of trust amounts to a fraudulent misappropriation or disposition of the trust property, it is a misdemeanour, punishable with not more than seven years' penal servitude (maximum); the fiat of the Attorney-General is required before the prosecution can be instituted; and if the prosecutor is a person who has taken any civil proceedings against the trustee, the sanction of the Court or judge before whom such civil proceedings have been had or are pending is also required (Larceny Act, 1916, s. 21).

Bread. The manufacture and sale of bread is governed in the metropolis by the statute 3 Geo. 4, c. cvi. (generally known as the London Bread Act, 1822), and elsewhere by the Bread Act, 1836. Both Acts, except as regards the numbers of the sections, are practically the same. The substances of which bread may be made are enumerated in s. 2 of each Act; s. 12 of the Act of 1822, and s. 10 of the Act of 1836 provide that all bread made otherwise than of wheaten flour must be marked with the letter "M"; making bread of prohibited ingredients is punishable summarily under s. 10 of the Act of 1822 and s. 8 of the Act of 1836. These sections apply only to bread for sale. The adulteration of corn meal or flour, or the selling flour of one kind of grain as flour of another kind of grain, is punishable summarily under s. 11 of the Act of 1822 and s. 9 of the Act of 1836.

All the above enactments are now amended by the Bread Acts Amendment Act, 1922, which provides that nothing in them shall be deemed to prohibit the use of self-raising flour.

All bread, except French or fancy bread (q.v.), must be sold by weight, and sale in any other manner is punishable summarily (s. 4 of each Act). The weighing need not be at the time of sale, but must have reference to the sale. Sellers of bread must have scales, etc., in their shops (Act of 1822, s. 8; Act of 1836, s. 6), and failure so to do is punishable summarily (*ib.*, *ib.*). Sellers must, outside London, have scales, etc., with all delivery vans, and failure so to do or failure to weigh bread bought from the van is punishable summarily (Act of 1836, s. 7); but in London the corresponding section 9 of the Act of 1836 applies only to a van, etc., drawn by a horse, mule or ass.

Bread is, of course, within the Sale of Food and Drugs Acts. See ADULTERATION; FOOD; FRENCH BREAD.

Breaking Bulk. At common law there could be no larceny of goods which had originally been lawfully obtained by a person who subsequently wrongfully converted them to his own use, unless such conversion was preceded by some new act of taking. In the case of a bailee there would be such a new taking where he wrongfully broke bulk, that is to say, took some things from a package entrusted to him, or otherwise separated some part of the goods from the bulk. The Larceny Act, 1861, s. 3, made the question as to whether bulk had or had not been broken immaterial. That section is now repealed; but the Larceny Act, 1916, s. 20, has the same effect.

Bressumer. "A wooden beam or metallic girder which carries a wall" (London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 5 (7)).

Brevagium. Stated by Blount to have been "a payment in bran which tenants anciently made to feed their lord's hounds." But dogs do not eat bran.

Breve. A writ. See, for instance, RECTO. The word *breve* literally means a short thing. "Breve ita dicitur," says Bracton, "quia

rem de qua agitur et intentionem petentis, paucis verbis breviter enarrat." (A writ is so called because it states briefly and in a few words the matter to which it relates and what the plaintiff wants.) The Norman-French for *breve* was *brief* (q.v.).

Breve judiciale non cadit pro defectu formæ (*Jenk. Cent.* 43). (A judicial writ does not fail through defect of form.) See WRIT.

Breve perquirere. To purchase a writ, that is to say, to pay the prescribed fee for the issue of the writ.

Brevet Rank. This is conferred by a commission authorising an officer to have, outside his own regiment, the rank immediately above that held by him in his own regiment. It, however, gives no right to higher pay. Brevet rank is not given to officers below the rank of captain or above that of lieutenant-colonel.

Brevia magistralia. Writs *in consimili casu*. See ACTION ON THE CASE. The term is used by Bracton.

Brevia placitata. A legal treatise dating from about 1260

Brevia testata. After grants by parol only had been superseded by written memorandums of conveyance and investiture, it became customary, as Coke tells us, to note on the memorandum the names of the persons who had heard it read without having actually signed it as witnesses. Memorandums with such notes thereon were known as *brevia testata*.

Breviate. During part of the seventeenth century it was customary to prefix to every bill introduced into Parliament a memorandum (known as a breviate or brief) of the contents of the bill. At present any member introducing a bill may prepare an explanatory memorandum—called simply a memorandum—which, subject to the approval of the officials of the House, will be circulated with the bill. See, for instance, the thirty-page memorandum prefixed in 1922 to the three hundred pages of the Law of Property Bill.

Brevibus et rotulis liberandis, De. A writ which formerly lay to command an outgoing sheriff to hand over to his successor all writs and records in his possession.

Brewster Sessions. A popular name for the "general annual licensing meeting." See LICENCE.

Briber; Bribour. This meant anciently one who offered a bribe, one who took a bribe, and also one who was a petty thief.

Bribery. Giving or offering any gift or reward to any person holding any judicial or other public office for the purpose of influencing the conduct of such person in his office, or the receiving by any such person of any such gift or reward, is bribery at common law. So also are the bribery or attempted bribery of a juryman, and the buying or selling of public offices.

The Public Bodies Corrupt Practices Act, 1889, deals with the bribery of the members, officers or servants of county councils and similar bodies. As to the bribery of persons other than public officers in order to influence them in their duties, see CORRUPTION.

Bribery at elections—whether parliamentary, municipal or local government—is a corrupt practice (q.v.). The offence is defined by the Corrupt Practices Prevention Act, 1854, ss. 2, 3. See also the Representation of the People Act, 1867, s. 49.

Bridges. A bridge of public utility dedicated to and accepted by the public is a public bridge, and at common law is repairable by the county unless the duty of repairing is imposed by statute or otherwise on some other body or on some person.

The management of every bridge over which a main road passes passed to the county council under the Local Government Act, 1888, ss. 3, 11 (1), except in the case of bridges for which urban authorities became responsible (*ib.*, s. 11 (2)).

Any public body or any person neglecting the duty of repairing a public bridge is at common law liable to indictment.

Malicious injury to public bridges so as to make them dangerous or impassable is a felony punishable with a maximum sentence of penal servitude for life (Malicious Damage Act, 1861, s. 33).

Bridgemasters. These were persons, chosen by the citizens, who had the care of London Bridge and received certain fees and emoluments. Bridgemasters were also found in other corporate towns.

Bridle-path; Horseway; Packway. This is a way along which either a particular person or the public at large have the right to lead or ride a horse. It is to be distinguished from a driftway (q.v.). The one way may, however, be both a bridle-path and a driftway.

Brief. A brief is a document containing the materials or instructions furnished by a solicitor to a barrister to enable him to represent the client on the trial of a criminal case or of an action, or on the hearing of a petition, motion, summons or other application. Strictly speaking, the "brief" includes all the documents supplied to counsel, such as copies of pleadings, affidavits, correspondence, etc.; but in a more technical sense the "brief" is that

document which is drawn up by the solicitor in the form of a narrative or explanatory comment on the case. The brief is the authority of the barrister to appear for the client. It is endorsed with the title of the Court and of the action or matter in which it is delivered, with the name of the solicitor and of the barrister, and with the proper fee.

Formerly, certain orders were obtainable as a matter of course on production of a brief purporting to contain instructions to counsel to apply to the Court for the order required, and indorsed with counsel's hand, *i.e.*, signature, although the matter was never mentioned to the Court at all; these were hence called hand-briefs: they are quite obsolete. It is possible that a brief to counsel originally consisted merely of the writ with the Norman French name for it on the back. In early times the pleadings were oral. See BREVIATE; BREVE.

Brief al evesque. This was a judicial writ which formerly lay in the action of QUARE IMPEDIT (q.v.) directing a bishop to remove an incumbent.

Brigbote. The liability to contribute to the cost of maintaining bridges, etc., which in Anglo-Saxon times attached to land. See TRINODA NECESSITAS.

Bristol Bargain. "What is usually termed a Bristol Bargain is twenty pounds per annum for seven years for one hundred pounds" [lent], said the Master of the Rolls in *James* v. *Oades* (1700), 2 Vern. 402. There the loan was made on obviously good security, and the Court declared void, as being "against conscience" an agreement to pay £40 per annum for eight years in consideration of a loan of £200, all that the lender was allowed being £200 with simple interest at 6 per cent. The bargain described by the Court as a Bristol Bargain would give the lender about 11 per cent. The bargain which the Court set aside would give the lender about 15 per cent.

Bristol, Red Book of. A treatise dealing with the law merchant (q.v.), and containing a copy of the laws of Oleron (q.v.). The original, the author of which is unknown, appears from the handwriting to have been written in the fourteenth century: it was edited and published in 1900 by Mr. F. B. Bickley.

British Empire, Order of. This order (the full title of which is The Most Excellent Order of the British Empire) was founded 21st June, 1917, and includes both men and women. The classes for men are: Knights Grand Cross (G.B.E.); Knights Commanders (K.B.E.); Commanders (C.B.E.); Officers (O.B.E.); and Members (M.B.E.). Those for women are: Dames Grand Cross (G.B.E.); Dames Commanders (D.B.E.); Commanders (C.B.E.); Officers (O.B.E.); and Members (M.B.E.).

The order was divided into a military division and a civil division in December, 1918. The various ranks take precedence next after the corresponding ranks of the Royal Victorian Order: see VICTORIAN.

British Museum. This consists not only of a museum but also of a national library, to which, under the Copyright Act, 1911, c. 46, as amended by the Copyright (British Museum) Act, 1915, a copy of every book, other than trade advertisements and similar publications, must be sent within one month of publication.

The British Museum is governed by various Acts, the principal of which is the statute 26 Geo. 2, c. 22. The books of the museum are available to the public in the Reading Room, admission to which is by a reader's ticket. The precise right, if any, of members of the public to obtain such tickets is not the subject of any judicial decision; nor is it clear whether an action will lie against the trustees, in whom the museum and its contents are vested, if they place in the library for the use of readers publications containing defamatory matter.

British North Borneo Company. See COMPANIES, CHARTERED.

British Pharmacopœia. This is "a book containing a list of medicines and compounds and the manner of preparing them, together with the true weights and measures by which they are to be prepared and mixed, and containing such matters and things relating thereto as the general council shall think fit" (Medical Act, 1858, s. 54). The general council is the council established by the Act (s. 3). (See GENERAL COUNCIL.) It is illegal to compound any medicine of the British Pharmacopœia except according to the formularies thereof (Pharmacy Act, 1868, s. 15) unless they are patent medicines (s. 16); but this prohibition does not apply to any legally qualified medical practitioner or legally qualified veterinary surgeon (Pharmacy Act, 1869, s. 1).

A copy of the Pharmacopœia purporting to be printed by the publisher for the council is evidence (Medical Council Act, 1862, s. 3).

Where the standard for the composition of a drug is fixed by the British Pharmacopœia, that standard should be accepted by the Court unless and until it is proved that some other standard is correct.

British Ship. See SHIP.

British South Africa Company. See COMPANIES, CHARTERED.

British Subject. The expression "British subject" means a person who is "a natural-born British subject, or a person to whom a certificate of naturalization has been granted, or a person who has become a subject of His Majesty by reason of any annexation of territory" (British Nationality and Status of Aliens Act, 1914, s. 27 (i); British Nationality and Status of Aliens Act, 1918, s. 2 (6)).

"The following persons shall be deemed natural-born British subjects, namely, (*a*) any person born within His Majesty's dominions and allegiance; and (*b*) any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfils any of the following conditions, that is to say, if either—(i) his father was born within His Majesty's allegiance; or (ii) his father was a person to whom a certificate of naturalization had been granted; or (iii) his father had become a British subject by reason of any annexation of territory; or (iv) his father was at the time of that person's birth in the service of the Crown; or (v) his birth was registered at a British consulate within one year, or, in special circumstances, with the consent of the Secretary of State, two years, after its occurrence, or in the case of a person born on or after the 1st day of January, 1915, who would have been a British subject if born before that date, within twelve months after the 1st day of August, 1922; and (*c*) any person born on board a British ship, whether in foreign territorial waters or not: provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means His Majesty exercises jurisdiction over British subjects: provided also that any person whose British nationality is conditional upon registration at a British consulate shall cease to be a British subject unless within one year after he attains the age of twenty-one or within such extended period as may be authorised in special cases by regulations made under this Act—(i) he asserts his British nationality by a declaration of retention of British nationality, registered in such manner as may be prescribed by regulations made under this Act, and (ii) if he is a subject or citizen of a foreign country under the law of which he can, at the time of asserting his British nationality, divest himself of the nationality of that foreign country by making a declaration of alienage or otherwise, he divests himself of such nationality accordingly. (2) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth. (3) Nothing in this section shall, except as otherwise expressly provided, affect the status of any person born before the commencement of this Act" . . . (British Nationality and Status of Aliens Act, 1914, s. 1, as amended by the British Nationality and Status of Aliens Act, 1918, s. 2 (1), and by the British Nationality and Status of Aliens Act, 1922, s. 1). The Act of 1914 was passed 7th August, 1914, and came into operation (see s. 28 (3)) 1st January, 1915.

Before 1st January, 1915, (1) a person was not a British subject merely because he had been born on board a British ship in foreign territorial waters; (2) not merely the child, but also the grandchild, born aboard, of a natural-born British subject (see the repealed British Nationality Act, 1772) was a British subject; (3) the child, born abroad, of a naturalized British subject was not a British subject, there being no enactment to cover the point; and (4) the naturalization of an alien *ipso facto* (see the repealed Naturalization Act, 1870, s. 10 (5)) naturalized any child of such alien who during infancy became resident with him or her in the United Kingdom. This statement of the differences between the law as it was before 1st January, 1915, and the present law is not exhaustive: for further information see *Chitty's Statutes*, Vol. I.

Britton is the name given to a work on English law written in the reign of Edward I. by an author whose identity has not been clearly established. The work is in Norman French, and claims to be promulgated with the authority of the king. It is founded to a great extent on Fleta (q.v.), and to a less extent on Bracton (q.v.); the arrangement, however, is quite different from that of either of those treatises, being based on the remedies appropriate to the various rights rather than on the rights themselves. The best and most recent edition of Britton is that of 1865, edited for the Clarendon Press by F. M. Nicholls.

Broad. See SILVER COINS.

"Broad Arrow." The use of the "broad arrow" as a mark for Government property is sanctioned by the Public Stores Act, 1875, s. 4 and Sched. The "broad arrow" is a

mark showing the feather and barb of an arrow with a very short intermediate shaft.

Broadmoor Act. The popular title of the Criminal Lunatic Asylums Act, 1860, under which Broadmoor Asylum was established for the reception of criminal lunatics.

Brocage; Brokerage; Marriage Brokerage Contracts. These terms mean contracts made to procure marriages for reward. Any such contract is wholly void. The procurement of marriage can never be a good consideration; and any instrument executed for any such consideration will be set aside.

Brochia. Bracton (lib. 2, c. 2) speaks of a tenant holding by the tenure of providing for the king at certain places and times one man and one horse "et saccum cum brochia." It would appear that the *saccus* (or sack) was for the transport of dry provender or provisions, and that the *brochia* was a vessel to contain fluids.

Broker. A broker is an agent for the purchase and sale of goods, being employed by an intending vendor to find a purchaser, or by an intending purchaser to find a vendor. His remuneration consists of a commission or payment (called brokerage) proportionate to the price of the goods sold. A broker differs from a factor (q.v.) in the following respects:—He generally contracts in the name of his principal, while a factor may buy and sell either in his own name or in that of his principal; he is merely a negotiator between the parties, and is therefore not entrusted with the possession or control of the goods, while a factor is. Stockbrokers are an exception to these rules.

A broker, known to be acting as such, is not in general personally liable on a contract, unless he signs a written memorandum with his own name, nor can he sue in his own name on the contract; but an insurance broker is an exception to this rule, to the extent that he can always sue in his own name for the premiums.

In the criminal law, a broker who fraudulently misappropriates money or property belonging to his employer is guilty of a misdemeanour. (Larceny Act, 1916; s. 20.)

Brokers in the city of London had formerly to be admitted by the Lord Mayor and aldermen, and to pay to the city a yearly fee of forty shillings (statute 6 Anne, c. 68), which was increased in 1817 to £5 (statute 57 Geo. 3, c. lx.), and the Lord Mayor and aldermen had a certain control over them. Such admission, payment of fees, and control were abolished in part by the London Brokers' Relief Act, 1870, and altogether by the London Brokers' Relief Act, 1884.

A person employed to levy a distress for rent (see BAILIFF) is popularly known as a broker. See PASSAGE BROKER.

Bronze Coinage. See COPPER COINS.

Brooke's Abridgment. See ABRIDGMENTS.

Brothel. This means a house or part of a house or a room used for purposes of fornication by men and women resorting thereto. It is synonymous with "common bawdy-house" and "house of ill-fame," and it comes within the category of disorderly houses. A brothel is a place used for immoral purposes; but every place used for immoral purposes is not a brothel. Thus, where premises are used for the purpose of fornication by one woman only; or where premises are for the use of a kept mistress only, there is no brothel. The keeping of a brothel is a misdemeanour at common law.

The Disorderly Houses Act, 1751, contains provisions intended to facilitate prosecutions upon indictment for the common law misdemeanour; but it was not until 1885 that provision was made for summary proceedings.

The Criminal Law Amendment Act, 1885, s. 13 (as amended by the Criminal Law Amendment Act, 1912, s. 4, and the Criminal Law Amendment Act, 1922, s. 3), provides that "any person who (1) keeps or manages or acts or assists in the management of a brothel, or (2) being the tenant, lessee, or occupier, or person in charge of any premises, knowingly permits such premises, or any part thereof, to be used as a brothel, or for the purposes of habitual prostitution, or (3) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel" shall be liable on summary conviction to fine or, at the discretion of the Court, to imprisonment, or to both fine and imprisonment. But this enactment left a landlord, etc., with no means of getting rid of a tenant merely because that tenant kept a brothel. The Criminal Law Amendment Act, 1912, s. 5, provides means by which a tenant, etc., may be summarily got out if such tenant, etc., has been convicted of an offence under s. 13 (2) of the Act of 1885, and further provides that a landlord, etc., failing to avail himself of such means shall be deemed to have aided and abetted the commission of any subsequent such offence during the continuance of the tenancy unless he proves that he took all reasonable precautions against the occur-

rence of such subsequent offence. The section also provides that if the landlord, etc., does determine a tenancy in pursuance of it, but subsequently accepts the tenant as a new tenant, then any future offence under s. 13 of the Act of 1885 shall be deemed to have been committed during the former tenancy unless the landlord, etc., proves that he took all reasonable precautions to prevent a recurrence of the offence.

Any holder of a justices' licence convicted of permitting his licensed premises to be used as a brothel forfeits his licence (Licensing (Consolidation) Act, 1910, s. 77 (3)), and is disqualified for life from holding a justices' licence (*ib.*, s. 35 (4)). This is a re-enactment of s. 15 of the Licensing Act, 1872.

No justices' licence can be issued for any premises in respect of which the licences of two persons (neither of whom was licensed for the premises on 10th August, 1872) have been forfeited within two years; the disqualification to continue for one year from the date of the last forfeiture. (Act of 1910, s. 36.) The holder of a justices' licence who permits his licensed premises to be used as a brothel may be summarily convicted under this Act (*ib.*, s. 77), but only a pecuniary penalty can be imposed.

The detention of any female against her will in any premises in order that she may be unlawfully and carnally known, or in any brothel, is a misdemeanour with a maximum punishment of two years' imprisonment (Criminal Law Amendment Act, 1885, s. 8); and there is detention where, in order to make her stay, a female's own clothing is withheld or where she is threatened with proceedings if she takes clothing which has been supplied to her (*ib.*).

Allowing a child or young person between fourteen and sixteen to reside in or frequent a brothel is a misdemeanor punishable with a maximum of six months' imprisonment and a fine of £25. (Children Act, 1908, s. 16.)

Brougham's Acts. The multitudinous activities of Lord Brougham included a prominent part in procuring the enactment of a number of statutes known popularly as Brougham's Acts. The most important were:—

(1) The statute 51 Geo. 3, c. 23, now repealed and replaced by other enactments, which for the first time made slave trading a felony.

(2) The Privy Council Appeals Act, 1832, and the Judicial Committee Act, 1833, which created the Judicial Committee of the Privy Council (q.v.).

(3) The Real Property Limitation Act, 1833, and the Fines and Recoveries Act, 1833, both of which effected important reforms in the law of real property.

(4) The statute 13 & 14 Vict. c. 21, which was repealed and, with additions, substantially re-enacted by the Interpretation Act, 1889.

(5) The Evidence Act, 1851, which made parties to any action competent and compellable witnesses therein.

(6) The Marriage (Scotland) Act, 1856, as to which see GRETNA GREEN.

Brutum fulmen. A threat to which effect cannot be given.

Bubble Act. The popular title of the statute 6 Geo. 1, c. 18 (repealed in 1825), which was enacted to render illegal and void the methods used for the purposes of the South Sea Bubble.

Buckstalls. See DEER HAYES.

Budge of Court. A former popular corruption of Bouche of Court.

Buggery. This in the common law is the synonym for sodomy, as to which see ABOMINABLE CRIMES.

Building Lease. A lease, generally for a term of ninety-nine years, at a rent known as a ground rent, under which the lessee covenants to erect certain specified buildings on the land demised by the lease, and to insure and keep in repair such buildings during the term. At the expiration of the term the buildings become the property of the lessor. The ground rent is fixed at such a figure that the lessee, after paying it and after providing for the return of his capital at the end of the term, will make a reasonable rate of profit on the capital.

Building Societies. A building society is one established for the purpose of raising, by the subscriptions of some of its members, a stock or fund for making advances to others of its members upon security of freehold, copyhold or leasehold estate, by way of mortgage (Building Societies Act, 1874, s. 13). The advances are generally, but not necessarily, made to enable the members to acquire the property which they mortgage to the society. Theoretically, therefore, the members are of two classes: the borrowing members being those who have obtained advances from the society, and the investing members those who have not, and who therefore simply participate in the profits arising from the interest paid by the borrowers. Provision is generally made by the rules of the society for determining, in case of competition, the members to whom the available funds of the society are to be advanced from time to time. In many cases, however, so-called building societies are little

or savings banks, all the available funds being lent to strangers.

A building society formed before 2nd November, 1874, was formed under the Building Societies Act, 1836: since 1874 it is formed under the Building Societies Acts, 1874 to 1894, and is regulated by rules registered with the Registrar (Act of 1874, ss. 3, 16, 17). A society formed under the Building Societies Acts, 1874 to 1894, or which existed before 2nd November, 1874, and has been registered under those Acts, is a corporation (Act of 1874, s. 9; Act of 1875). Unincorporated societies, that is to say, societies formed under the Act of 1836, and not registered under the Act of 1874, are governed by the Act of 1836 and the earlier Acts incorporated therewith: all other societies are governed by the Acts of 1874 to 1894. The number of unincorporated societies is now very small.

Building societies are of two principal kinds: terminating societies and permanent societies. A terminating society is one which by its rules is to terminate at a fixed date, or when a given result has been attained (Act of 1874, s. 5). The general plan of these societies has been thus briefly described:—"A certain number of persons form themselves into a society, of which they become members by subscribing for a certain number of shares. Upon each share a certain periodical subscription of uniform amount is payable throughout the whole duration of the society, the object being to continue the society until the members' subscriptions, being invested, shall amount to a fund large enough to give every member a sum fixed by the rules at the commencement. Thus it may be proposed to close the society when there are funds sufficient to give to the members seventy pounds in respect of each share held by them, and the monthly subscription will be 7*s*. 6*d*. . . . When by means of these subscriptions the society has in hand a sum of (say) seventy pounds, it will be advanced to one of the members upon mortgage of land or house property, and the member will thenceforth pay an increased subscription (perhaps 13*s*. 6*d*.) so long as the society lasts. There are two varieties of the terminating society, called Bowkett and Starr-Bowkett Societies, from the names of their originators": these two varieties differ from one another, but in each the making of advances is determined by ballot, and under s 12 (1) of the Act of 1894 no such ballot may take place in any society established after 25th August, 1894, so that no Bowkett or Starr-Bowkett society can now be formed.

A permanent society, as its name implies, may last for ever (Act of 1874, s. 5). In a society of this kind, shares are issued upon which the various members make payments, either in one sum, when the share is said to be "paid up," 'or by periodical or other sums; the interest is either allowed to accumulate until the share has reached the full value prescribed by the rules, or else paid out yearly to the member, as he may prefer. Advances are made to borrowing members or strangers, repayable by small periodical instalments, extending over a fixed term of years. See DISSOLUTION; FREEHOLD LAND SOCIETIES; BALLOT AND SALE SOCIETY.

Bull. See PAPAL BULL.

Bum-bailiff. A popular corruption of "bound bailiff." See BAILIFF.

Burden of Proof. See PROOF.

Burgage. Littleton (*Co. Litt.* 108, 109) expressly says that this tenure was simply socage as applied to towns: Coke lets this pass; and this version has, until recently, been generally accepted. But it is completely wrong. The best definition of burgage tenure is to be found in an admirable article contributed by Mr. De Hemmeon to the *Law Quarterly Review*, vol. 26, at pp. 215-230, 331-348. There (p. 216) he says that it was "a form of free tenure peculiar to boroughs, where a tenement so held might be alienated by gift, sale, or devise to a degree regulated only by the custom of the borough, unburdened by the incidents of feudalism and villenage, divisible at pleasure, whose obligations began and ended in the payment of a nominal quit-rent usually to an elected officer of the borough": and he adds that even such payment was made "only at a very early period of burghal history." Burgage tenure was, in fact, very much the same as modern tenure in fee simple. The great medieval lawyers knew little of the tenure: pleas relating to it nearly always held in the borough courts, and not before the King's judges. Many tenements held by burgage tenure were subject to a great variety of customs, of which the most remarkable was that called Borough English (q.v.), but these customs attached to lands of burgage tenure, not because the lands were so held, but because the lands happened to be within a borough where the custom prevailed.

Burgess. A person who is registered on the burgess roll of a borough.

A man is entitled to be registered if he is of full age and not subject to any legal incapacity, and (*a*) is on the last day of the quali-

fying period occupying as owner or tenant any land or premises in the borough; and (*b*) has during the whole of the qualifying period so occupied any land or premises in the borough, or, if the borough is not a county borough, in any administrative county in which the borough is wholly or partly situate; a man who himself inhabits any dwelling-house by virtue of any office, service or employment is, if the dwelling-house is not inhabited by his employer, to be deemed to occupy the dwelling-house as tenant; and unfurnished lodgings are to be deemed a dwelling-house (Representation of the People Act, 1918, s. 3, Sch. 6 (2)). The qualifying period is six months ending 15th January or 15th July, both days included; but, in the case of a person who is a naval or military voter who has been serving at any time during the six months and has ceased to serve, the period is one month (s. 6) A woman is entitled to be registered (*a*) where she would be entitled to be registered if she were a man and (*b*) where she is the wife of a man entitled to be registered in respect of premises in which they both reside and where she is thirty years of age and is not under legal incapacity; and a naval or military voter who is registered in respect of a residence qualification which he would have had but for his service shall be deemed to be resident in accordance with the qualification (s. 4 (3)).

"Burgess" formerly meant also a member of Parliament who sat for a city or borough, while county members were known as knights of the shire.

Burgess Roll. This contains the names of the voters who are entitled to vote at the election of councillors for a borough (q.v.), and who are eligible for the corporate offices.

Burghbote. The liability to contribute to the cost of maintaining the walls, etc., of fortified towns which in Anglo-Saxon times attached to land. See TRINODA NECESSITAS.

Burghbreche. Used in the laws of Canute as meaning a fine imposed on a town for a breach of the peace by the inhabitants thereof.

Burgheriche. Used in *Domesday*; said to mean a breach of the peace in a town.

Burghmote; Burgemotus. A court, or meeting, of the burgesses of a town for the transaction of civic business.

Burglary, by the common law, is where a person breaks and enters any dwelling-house (q.v.) by night, with intent to commit a felony therein, whether such felonious intent be executed or not. The "breaking" is either actual (as where the person makes a hole in a door or opens a window), or in law (as where he obtains an entrance by threats or fraud, or by collusion with someone in the house). Night is the interval between 9 p.m. and 6 a.m. (Larceny Act, 1916, s. 46 (1)).

A person who breaks out of a dwelling-house by night is guilty of burglary if he entered it by day with intent to commit a felony, or if he committed a felony therein before breaking out (*ib.*, s. 25). "Breaking" is necessary to constitute burglary; but mere entry into a dwelling-house in the night with intent to commit felony is punishable with penal servitude not exceeding seven years (*ib.*, s. 27).

Burglary is punishable with penal servitude for life as a maximum punishment (*ib.*).

Coke says that "this word *burglar* is derived of these two words, viz., *burgh*, signifying an house, and *laron*, signifying a thief, as it were an house-thief," but Murray rejects this derivation, and points out that the word is an Anglicised form of the thirteenth-century *burglator*, the origin of which is obscure. See HOUSEBREAKING.

Burial. At common law, every person may be buried in the churchyard of the parish where he dies, unless he was within certain ecclesiastical prohibitions (*e.g.*, not having been baptized), and provided that the rites of the Church of England are observed. But no person is entitled to be buried in the church itself without the consent of the incumbent, unless such a right exists by prescription, as belonging to a manor-house or other messuage The right of burial may be enforced by mandamus or information, or by the ecclesiastical punishment of suspension. The common law rule, that every burial in a parochial churchyard must be celebrated according to the rites of the Church of England, has been abolished by the Burial Laws Amendment Act, 1880, which provides that a deceased person may be buried within the churchyard or graveyard of a parish or ecclesiastical district or place without the Church of England service for the burial of the dead, provided proper notice of the intended burial is given to the incumbent; the burial may take place either without any religious service, or with any Christian and orderly religious service. The Act only extends to burial grounds in which the parishioners or inhabitants of the parish or ecclesiastical district have rights of burial, and it expressly enacts that it shall not authorise the burial of any person in any place where such person would have had no right of interment if the Act had not passed, nor authorise the burial of any person in a burial ground vested in trustees, without the performance

of any express condition on which, by the terms of the trust deed, the right of interment may have been granted.

Under the Interments (Felo de se) Act, 1882, any person found guilty of *felo de se* is to be interred within such churchyard, etc., as he might at common law have been interred in if the verdict of *felo de se* had not been found; the interment is to be made in some one of the ways authorised by the Act of 1880; but the rites of Christian burial are not authorised.

Fees on burial are due only by custom in each place, and not by the general law.

The principal statutes relating to burials are the Cemeteries Clauses Act, 1847, regulating the making and management of cemeteries by companies incorporated for that purpose; the Burial Act, 1852, making provision for closing burial grounds in the metropolis for the protection of the public health; the Burial Act, 1853, extending those provisions to other cities and towns; and the Burial Act, 1857, as to burial grounds for paupers.

The statutes 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134 (as amended by the Burial Act, 1855), and the eleven other Acts which, along with these three, make up the Burial Acts, 1852 to 1900, also contain enactments for providing a new burial ground in any parish where the existing burial ground is insufficient or dangerous to health: in such case a burial board is appointed by the vestry, with power to purchase land for a burial ground, and to borrow money for that purpose, the expenses being charged on the poor rate.

The Public Health (Interments) Act, 1879, empowers local authorities to acquire, construct and maintain cemeteries, subject to the provisions of the Cemeteries Clauses Act, 1847, and the Public Health Act, 1875. See MORTUARY.

The Consecration of Churchyards Acts, 1867 and 1868, and the Places of Worship Sites Act, 1873 (as amended by the Places of Worship Sites Amendment Act, 1882), contain provisions for voluntary grants and sales of land for the purposes of burial grounds, including gifts of land by limited owners, such as tenants for life.

As to the registration of burials, see REGISTRATION.

As to cremation, see that title.

Burn-beating. Denshiring (q.v.).

Burning to Death. Down to 1790, this was the punishment of women for high treason or for petty treason. Petty treason included the murder of a husband by his wife, the murder of a master or mistress by a servant, and several coinage offences. This punishment was abolished by the statute 30 Geo. 3, c. 48, and in practice it had rarely been actually inflicted, the custom being to strangle the woman before she was burned. Compare HIGH TREASON.

Burning to death was anciently the punishment of heresy (q.v.), at first under the common law writ *de comburendo haeretico*, which was finally abolished by the statute 29 Car. 2, c. 9, and afterwards under various statutes passed between 1381 and 1555, all of which were repealed by the statutes 1 Edw. 6, c. 12, s. 3, and 1 Eliz. c. 1, s. 6.

Burseholder. Borsholder.

Bushel. A measure of capacity containing eight imperial gallons (Weights and Measures Act, 1878, s. 15).

Business Day. Any day which is not (1) Sunday, Good Friday or Christmas Day; (2) a bank holiday; (3) a day of public fast or thanksgiving (Bills of Exchange Act, 1882, s. 92) all of which days are non-business days.

Business Names, Registration of. The Registration of Business Names Act, 1916, s. 1, makes it necessary to register under that Act: (*a*) Every firm having a place of business in the United Kingdom and carrying on business under a business name which consists of anything except the surnames, with or without the Christian names or initials, of the individuals, or the corporate names of the corporations, composing the firm; (*b*) every individual having a place of business in the United Kingdom and carrying on business under a business name which consists of anything except his surname with or without his Christian name or initials; (c) every individual or firm having a place of business in the United Kingdom who or a member of which has changed his name, except in the case of a woman changing her name on marriage. "Business" includes profession (s. 22). A penalty of £5 per day for any period of non-registration is provided (s. 7), and a penalty not exceeding £20 or imprisonment not exceeding three months may be imposed for the making of any false statement in any statement required by the Act (s. 9). Every firm or individual required to be registered must set out on all business letters, etc., the true name or names of the person, persons or corporations trading under the business name (s. 18). There are various ancillary provisions, for information regarding which reference should be made to the Act.

Busones. Used by Bracton (lib. 3, tract 3,

c. 1) in the phrase *busones comitatus*, that is to say, the influential landowners of the county.

Bustard. A large edible bird, running up to forty pounds in weight, formerly abounding upon the open heaths which were common in England. Since about 1838 no bustards, except an occasional stray bird from the Continent, have been found in this country. Bustards are included in the term "game" for the purposes of the Night Poaching Act, 1828, s. 12, and the Game Act, 1831, s. 2; but when the Poaching Prevention Act, 1862, was passed it was not deemed necessary to include them in the definition of game contained in s. 1 of that Act. Under the Game Act, 1831, s. 3, the close season for them is from March 1st to September 1st.

Butcher. See SLAUGHTER-HOUSES. If he boils blood, bones or tripe, his business is an offensive trade (q.v.).

Butlerage. See PRISAGE; BOTILER, ETC.

Butt. A cask for wine, beer or cyder containing from 108 to 140 gallons. This measure is not known to the law.

Butter. "The word 'butter' shall mean the substance usually known as butter, made exclusively from milk or cream or both, with or without salt or other preservative, and with or without the addition of any colouring matter" (Margarine Act, 1887, s. 3). Compare MILK-BLENDED BUTTER.

Bye-laws are rules made by some authority (subordinate to the Legislature) for the regulation, administration or management of a certain district, property, undertaking, etc., and binding on all persons who come within their scope. Thus every Act of Parliament incorporating a railway company gives it power to make bye-laws for the regulation of its line, subject to the sanction of the Board of Trade. Municipal corporations have a similar power.

The homage (q.v.) of the customary court in some manors has, by custom, the right of making bye-laws for the regulation of the common, *e.g.*, the draining and fencing of the land, stinting the number of cattle, etc.

C

C.B. See BATH, ETC.

C.B.E. See BRITISH EMPIRE, ETC.

"C.F.I." or **"C.I.F."** These letters, when used in a mercantile agreement for the sale of goods, denote that the sum named in the agreement includes the price of the goods (C.), freight (F.), and insurance during transit to the purchaser (I.).

C.H. See COMPANION OF HONOUR.

C.I. See CROWN OF INDIA, ETC.

C.I.E. See INDIAN EMPIRE, ETC.

C.M.G. See SAINT MICHAEL, ETC.

C.S.I. See STAR OF INDIA, ETC.

C.V.O. See ROYAL VICTORIAN, ETC.

Cab. The London Cab Act, 1896, s. 3, enacts that in that Act the expression "cab" shall mean any hackney carriage within the meaning of the Metropolitan Public Carriages Act, 1869. The London Cab and Stage Carriage Act, 1907, s. 6 (1), declares that in that Act the expression "cab" has the same meaning as the expression "hackney carriage" has in the Act of 1869, and (*ib.*, s. 6 (2)), that the expressions "cab," "hackney carriage," and "stage carriage" include vehicles propelled by mechanical power. The Act of 1869, s. 4, enacts that in that Act "hackney carriage" shall mean any carriage for the conveyance of passengers which plies for hire within the limits of that Act and is not a stage carriage; and it also enacts that in the Act "stage carriage" shall mean any carriage for the conveyance of passengers which plies for hire in any public road, street or place within the limits of the Act, and in which the passengers or any of them are charged to pay separate and distinct, or at the rate of separate and distinct, fares for their respective places or seats therein.

Cabinet. All that need here be said of the Cabinet is that it is entirely unknown to the law, being merely a committee formed, without legal sanction, from certain members of the Privy Council holding for the time being the highest political offices. See PRIME MINISTER.

Cables. See ANCHORS.

Cachet. See SIGNET.

Cadaver. A dead human body. Coke (3 *Inst.* 203), with the recklessness in the matter of etymologies which characterised his time, states the word *cadaver* is formed of the first syllables of the words *caro data vermibus* (flesh given to the worms). This, of course, is nonsense.

Cade. An obsolete measure of herrings and sprats. As regards herrings, it contained sometimes five hundred and sometimes seven hundred and twenty. As regards sprats, it contained a thousand.

Cadet. The younger son of a landed gentleman. Afterwards, in the early part of the eighteenth century, applied to the volunteers who, without regular commissions, served in

capacity of officers. Now applied only to boys undergoing military or naval instruction as a preliminary to their being given commissions in the Army or made midshipmen in the Navy.

Cadit quæstio. (The matter admits of no further argument.)

Cæteris paribus. (Other things being the same.) Thus where A. is to be selected in preference to B. for an office *cæteris paribus*, it means that A. is to be preferred to B. if both are equally qualified.

Cairns' Act. The popular title of the Chancery Amendment Act, 1858, which was introduced by Mr. Cairns, afterwards the first Lord Cairns, who in 1858 was solicitor-general and a member of the House of Commons. It for the first time enabled the Court of Chancery to award damages in addition to, or in substitution for, a decree for specific performance, or in addition to, or in substitution for, an injunction in, for instance, an action to restrain interference with ancient lights. The Act is now replaced by the provisions of the Judicature Act, 1873, ss. 16, 24, and except in so far as it had been applied to the County Palatine of Lancaster (Statute Law Revision and Civil Procedure Act, 1883, s. 7) it was therefore repealed as to England (*ib.* s. 3), in 1883.

The Partition Act, 1868, which also was introduced by Mr. Cairns, is also popularly known as Cairns' Act.

Cairns' Act, Lord. The popular title of the Land Transfer Act, 1875. See LAND REGISTRIES.

Cal—. See KAL—.

Calceto reparendo, De. A writ which lay for the repair of the calcetum (q.v.).

Calcetum. A highway which was paved or metalled.

Calefagium. An obsolete right to take fuel, whether in a royal forest or in a manor.

Calendar. The Acts regulating the calendar throughout the whole of the King's dominions are the Calendar (New Style) Act, 1750, and the Calendar Act, 1751. Those Acts substituted the Gregorian Calendar (or New Style) for the Julian Calendar (or Old Style).

The effect was to cut out of the year 1752 the eleven days between the 2nd and the 14th September. Owing to the increasing error of the Julian Calendar those eleven days would be thirteen if the change were made now. Thus the 25th December of the Julian Calendar is now the 7th January of the Gregorian: see, for instance, Old Christmas Day. A further part of the reform was the provision that no hundredth year except the years 2,000, 2,400, and so on, should be a leap year. See NEW YEAR'S DAY.

Calendar, in criminal Procedure, is a list of prisoners to be tried at the assizes or Central Criminal Court, and of the offences with which they are charged, which is prepared for the use of the presiding judge by the governor of a prison (Prison Act, 1865, s. 62).

Call. This is a demand made upon a shareholder in a company to pay a certain portion of the amount which he, as such shareholder, is liable to pay. There are two kinds of calls—(i) those made in respect of the unpaid portions of the capital of a company in order to raise money for carrying on its business (directors' calls); and (ii) those made to pay the debts of a company when it is being wound up (liquidators' calls). In the case of a limited company, liquidators' calls cannot be made beyond the amount (if any) unpaid on each share; but in the case of an unlimited company, liquidators' calls depend entirely on the amount of the debts and the number of solvent shareholders.

In the case of companies under the Companies Acts, 1862 to 1917, all calls due from members are specialty debts (Companies (Consolidation) Act, 1908, ss. 14, 125). See A & B LISTS; CONTRIBUTORY.

Calling the Plaintiff. It was once usual for a plaintiff, when he or his counsel perceived that he had not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or to withdraw himself, whereupon the crier was ordered to call the plaintiff: and if neither he nor anybody for him appeared, he was nonsuited, the jurors were discharged, the action was at an end, and the defendant recovered his costs. The phrase was synonymous with nonsuiting the plaintiff.

Calling upon the Prisoner. See ALLOCUTUS.

Callis. Anciently this meant the king's highway.

Call of the House. This took place when, by order of the House of Commons, every member was required to attend the House on a particular day. There has been no such "call" since 1836.

Calves-head Roll. See ROLL OF THE TEMPLE.

Calvin's Case is the case of *Calvin* v. *Smith*, reported in 7 Coke's Reports, p. 1. It decided that persons born in Scotland after the accession of James I. to the English Crown were natural-born subjects of England for all purposes of descent, inheritance, etc.: it is hence sometimes called the case of the *post-nati*.

Camera, In. A case is said to be heard *in*

camera when it is heard privately, the public being altogether excluded.

No criminal case can be tried *in camera*, whether the case be tried summarily or on indictment (see INCEST); but it is to be observed that justices may, if they think fit, conduct *in camera* the preliminary investigation of any indictable offence whatsoever.

Under the Children Act, 1908, s. 115, there is power to exclude from the hearing of any criminal charge, or from any proceedings preliminary to such hearing, all children, not being infants in arms or witnesses or messengers, clerks or other young persons who are present in the course of their employment. Under s. 114 there is power, on any proceedings relating to an offence against or to any conduct contrary to decency or morality, to exclude, during the taking of the evidence of a child or young person, all persons not directly concerned in the case except *bonâ fide* newspaper reporters. For the purpose of these enactments, a child is a person under the age of fourteen years, and a young person is a person aged fourteen years and under the age of sixteen years (s. 131).

In civil cases it would seem to be now settled law that only the Chancery Division can in general hear cases *in camera*. It is the practice of that Division to take *in camera* matters affecting wards of court and lunatics, and also, by consent, family disputes. With or without consent, the Division can also hear *in camera* any case, such as one relating to a secret trade process, in which publicity would defeat the object of the action. The Probate, Divorce and Admiralty Division has no power to order that any matrimonial suit, including a nullity suit, be heard *in camera*, even if the parties consent, on grounds of public decency, the power of the Division to order a hearing *in camera* being confined to cases in which a party would be deterred from applying to the Court if the hearing were in public or where for other reasons a hearing *in camera* is necessary to secure the due administration of justice. It would appear that, like the two Divisions above mentioned, the King's Bench Division can also order a hearing *in camera* in any case in which such a hearing is necessary in order to prevent a failure of justice.

Interlocutory proceedings in chambers are, and always have been, conducted in private. With regard to such proceedings, R. S. C., Ord. 37, r. 1, merely means that oral evidence, as opposed to evidence on affidavit, is, in the absence of consent, to be taken.

Camera Stellata. The Star Chamber (q.v.).

Camisia. The alb (q.v.).

Campana Bajula. The mediaeval name of the hand-bell used at Mass, which, as Cowell explains, was "innocently retained amongst us by sextons, parish clerks, and public criers."

Campartum. A share or part of land. Long obsolete, but represented, in another sense, by CHAMPERTY (q.v.).

Campbell's (Lord) Act. This is the popular title of the Fatal Accidents Act, 1846, under which, and the amending Act, the Fatal Accidents Act, 1864, provision is made for compensating the families of persons killed by accident. For the purposes of these Acts, the death must have resulted from the act, neglect, or default of the defendant or his servants, such act, neglect, or default being of a kind which, if death had not ensued, would at common law have entitled the injured person to recover damages in respect thereof. The action is for the benefit of the wife, husband, parent, or child of the deceased person, and may be instituted by his or her executor or administrator; but in case the executor or administrator does not, within six months of the death, institute the necessary action, then any of the persons beneficially interested, whether legally, or even morally only, in the result of the action may institute the same. The damages recoverable are strictly compensatory and cannot be given in respect of the mental sufferings, etc., of the surviving relatives; but (Fatal Accidents (Damages) Act, 1908) in assessing damages no sum payable on the death of the deceased under any policy of assurance is to be taken into account. It should be noted that only the legitimate relatives of the deceased can recover damages under these Acts. See BASTARD.

The first Lord Campbell, who in 1846 was a peer and a cabinet minister, had much to do with the passing of the Act of 1846. That Act, it may be noted, broke down, as regards the matters with which it dealt, the common law rule embodied in the maxim *actio personalis moritur cum persona* (q.v.).

Campbell's (Lord) Libel Acts. The Libel Acts, 1843 and 1845, are sometimes called Lord Campbell's Libel Acts. He procured the passage of both through Parliament. As to the effect of the Acts on civil proceedings for libel, see APOLOGY. As to their provisions in connection with criminal proceedings for libel, see JUSTIFIABLE. The Obscene Publications Act, 1857 (as to which see OBSCENE), deals with what are in law obscene libels, and is sometimes grouped with the Acts of 1843

and 1845 under the popular title applied to those Acts.

Campertum. A cornfield.

Camp-fight. This meant the fighting of two or more combatants in a field, or set place for fighting, after trial by battle (q.v.) had been ordered, in which case it was once legal, or after a deliberate challenge on some private quarrel, in which case it was never legal. (See DUEL.) It was distinct from mere chance medley (q.v.). See also CHAMPION.

Campus Maii. According to the old books, this was a muster of the people for the purposes of national defence which took place annually on the 1st of May during the Anglo-Saxon period. See *Leg. Edw. Conf.* c. 35.

Canals. The principal Acts relating to canals are the Canal Offences Act, 1840, which provides for the appointment of constables for duty on canals; the Canal Tolls Act, 1845; the Canal Carriers Acts, 1845 and 1847; the Railway and Canal Traffic Acts, 1854 and 1888, relating to the traffic and management of canals; the Malicious Damage Act, 1861, ss. 31 *et seq.*; the Canal Boats Acts, 1877 and 1884, regulating the use and registration of canal boats as dwellings and the education of children living in canal boats; the Canals Protection (London) Act, 1898, which makes provision for the fencing of dangerous places on canals within the county of London; the Telegraph (Construction) Act, 1911, relating to the carrying of telegraphic lines across canals; the Larceny Act, 1916, s. 15, which covers larceny from boats on canals; and the Ministry of Transport Act, 1919, s. 2, which transferred to the Ministry of Transport all powers and duties as to canals which had previously been vested in any other Department. See ABANDONMENT OF CANAL.

Cancel; Cancellation. Literally, to cancel an instrument is to draw lines across it, or across some part of it, such as the signatures of the parties, with the intention of indicating that it is no longer in force; thus bankers commonly cancel cheques when they have been paid. A deed is usually cancelled by striking out the signatures and tearing off the seal. (See ALTERATION.) Cancellation of a will, even by the testator, does not revoke it, unless it is accompanied by a declaration executed by the testator in the manner in which wills are required to be executed (see the Wills Act, 1837, s. 20).

Cancellation of instruments is sometimes directed by a Court. Thus, when a person has entered into a contract for the sale of land, and the purchaser refuses to pay the money, the vendor may bring an action against him to deprive him of his right under the contract; time is given by the Court for payment of the money, and if the time expires without the money being paid, the contract is cancelled by the decree or judgment of the Court, and the vendor becomes again the owner of the estate. The Chancery Division also frequently cancels instruments which have answered the end for which they were created, or instruments which are void or voidable, in order to prevent them from being vexatiously used against the person apparently bound by them.

Cancellaria curia. The ancient name of the Court of Chancery.

Candidate. "The correct sense of the word 'candidate' is a person offering himself to the suffrages of the people" said Lord Ellenborough, speaking in 1813 of a parliamentary election: and the definition is still practically accurate. See the Corrupt and Illegal Practices Prevention Act, 1883, s. 63, which declares that a person is a candidate for the purposes of that Act if, after the issue of a writ, it is declared that he intends to stand for the constituency. And the definition applies to the multiplicity of elections which now take place. Thus the Municipal Corporations Act, 1882, s. 77, declares that "'Candidate' means a person elected, or having been nominated or having declared himself a candidate for election to a corporate office."

Candlemas. The Feast of the Purification (q.v.). Formerly the superior Courts did not sit on this day, which was one of the Grand Days (q.v.): and in the Inns of Court it was celebrated with "sumptuous entertainments, accommodated with music and almost all kinds of diversions." In parts of England, agricultural tenancies date from it.

Canes opertiæ. Dogs of which the fore-claws had not been cut, as distinguished from dogs of which the fore-claws had, under the forest laws, been cut to disable them from running after the deer.

Canestellus. Low Latin for a basket. In the RED BOOK OF THE EXCHEQUER (q.v.), fol. 137, it appears that Johannes de Listone held a manor by the service of making "canestellos" for the king.

Canfara. The ordeal (q.v.) by red-hot iron.

Canna. A rod or rood, whether as a measure of land or of distance.

Canon in ecclesiastical law means either (i) any rule of the *jus canonicum* contained in the *Decretum Gratiani*; or (ii) a rule of ecclesiastical conduct promulgated by the Convocation of the Church of England, whether it has

legal force or not. Thus, the canons of 1603 have no legal force. See CANON LAW; CONVOCATION.

The word is also sometimes used to denote a rule of civil law, as in the expression "the canons of descent." See DESCENT.

The word also means an ecclesiastical dignitary, as to whom see DEAN AND CHAPTER.

Under the Ecclesiastical Commissioners Act, 1840, s. 23, a number of "honorary canons" selected by the bishops from amongst the "deserving clergymen" of their dioceses are attached to the cathedral churches. An honorary canon, as such, has no emolument and no place in the chapter. See MINOR CANON.

Canon Law is a body of Roman ecclesiastical law, compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of the Holy See. About the middle of the 12th century the confusion and obscurity of the ecclesiastical law induced a monk of Bologna, called Gratianus, to codify the existing materials down to the year 1139; his work was known as the *Concordantia Discordantium Canonum*, afterwards as the *Decretum Gratiani*, and included not only the decrees, epistles, etc. themselves, but also a commentary of his own, known as the *Dicta Gratiani*. The subsequent decrees (*Decretales extravagantes*) were collected from time to time, especially in the five *Compilationes antiquæ*, until the inconvenience of these collections led Gregorius IX. to have a new collection prepared, hence known as the *Decretales Gregorii IX.*, in five books. A sixth book (*Liber Sextus*) was added by Boniface VIII. in 1298, and another by Clement V. in 1313. The two later collections, namely, the *Extravagantes Joannis XXII.* and the *Extravagantes communes* (which were added by Joannes Chappuis to his edition of the canon law published in 1500), were not official like the preceding collections. The *Decretum Gratiani*, and the five subsequent collections, together form the *Corpus Juris Canonici*.

Besides these pontifical collections, which, before the Reformation, were received as authentic in this island, as well as in other parts of Christendom, there is also a kind of national canon law, composed of legatine and provincial constitutions, and adapted only to the exigencies of this Church and kingdom. The legatine constitutions were ecclesiastical laws, enacted in national synods, held under legates from the popes in the reign of King Henry III., about 1220 and 1268. The provincial constitutions are principally the decrees of provincial synods of Canterbury, from the reign of Henry III. to that of Henry V., and adopted by the province of York in the reign of Henry VI. It was enacted in 1533 by the statute 25 Hen. 8, c. 19, that a review should be had of the canon law, and that, till such review should be made, all canons, constitutions, ordinances and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And, as no such review has yet been made, upon this enactment now depends the authority of the canon law in England, while all canons made since its date have no legal force, so far as the laity are concerned. See ECCLESIASTICAL LAW.

Canonical Obedience. In ecclesiastical law, this means the obedience due, under the canons or the Church, by those in priests' orders to the bishop, and by bishops to the archbishop: but there is much controversy as to what precisely such obedience is. It certainly is not implicit obedience. Thus in the case of one in priest's orders it means obedience to such orders as a bishop is by law empowered to give; and it does not include obedience to commands given with regard to matters not expressly covered by the ecclesiastical law.

Canonical obedience to the dean is due from the inferior members of the chapter.

A bishop is entitled to canonical obedience, not only from his clergy but also from all laymen on the foundation of his cathedral church. Such obedience is expressly promised by even the bell-ringers of St. Paul's whenever a new Bishop of London is installed.

Cantred; Cantres; Cantredus; Cantredum. A division of a county meaning the same thing as "hundred" (q.v.). It is sometimes said to have applied only to the Welsh counties, with reference to which it is used in the statute 28 Hen. 8, c. 3; but it would seem to have been used as interchangeable with "hundred" as regards some at least of the English shires, especially Essex and Sussex.

Canute, Laws of. A code promulgated at Winchester, with the consent of the Witan (q.v.) apparently between 1028 and 1035 by King Canute, known to modern purists as Cnut. It is divided into three parts, one dealing with ecclesiastical matters, another with secular matters others than those appertaining to the forest, and the third with the forest law. The laws are contained in the *Ancient Laws and Institutes of England*, as given in No. 2, published 1840, of the Record Commission Series; the first two parts are given in the original Anglo-Saxon, with a translation, and the third part, entitled *Constitutiones de*

Foresta, in Latin. Liebermann, the leading authority on Anglo-Saxon law, suggests that the "Constitutiones de Foresta" are a forgery, compiled about 1184: and he is almost certainly right in so thinking.

Canvasser. As regards municipal elections, a "canvasser" "means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting for a candidate at an election." (Municipal Corporations Act, 1882, s. 77; Municipal Corporations (Corrupt and Illegal Practices) Act, 1884, s. 34)). The definition is practically the same for all elections.

Cape. An obsolete writ concerning lands or tenements. It might, according to circumstances, be the *grand cape* or *cape magnum*, the *petit cape* or *cape parvum*, or the *cape ad valentiam*.

Capias ("that you take") is the generic name for several writs directing the person to whom they are addressed to arrest the person therein named. They are, or were, usually directed to the sheriff, and are, or were, of the kinds mentioned in the seven titles next following.

Capias ad audiendum judicium. In some cases it is necessary that the defendant in a criminal prosecution should be present in court when judgment is pronounced against him, and, therefore, if he is at large when the verdict of guilty has been given, a writ of *capias* may be issued for the purposes of bringing him up to receive judgment: this writ appears to be called a *capias ad audiendum judicium*.

Capias ad respondendum is a writ which may be issued for the arrest of a person against whom an indictment for a misdemeanour has been found, in order that he may be arraigned (q.v.). In practice, however, a justice's warrant is always used (see WARRANT), except where it is desired to make the defendant an outlaw (q.v.). Under the old practice in common law actions, before 1832, the *capias ad respondendum* was the writ by which an ordinary action was commenced; the defendant was not actually arrested on it, but was merely required to appear and put in common bail, unless the cause of action amounted to a certain sum, in which case he might be arrested or be compelled to put in special bail. See BAIL; VENIRE FACIAS; DISTRINGAS.

Capias ad satisfaciendum, or *ca. sa.*, is a writ for the arrest of the defendant in a civil action when judgment has been recovered against him for a sum of money and has not been satisfied. The sheriff generally returns to this writ: *cepi corpus et paratum habeo—i.e.* that he has taken the body of the debtor, and has it ready; or that the debtor is so ill that he cannot remove him without danger to his life; or he may return *non est inventus—i.e.* that the debtor is not found within his bailiwick. Imprisonment for debt having been abolished by the Debtors Act, 1869 (q.v.), in all except a few cases, the writ of *capias ad satisfaciendum* is now practically unknown, for, in the cases where it is still theoretically available under that Act, it has in practice been superseded either by an order of committal or a writ of attachment. See ATTACHMENT; COMMITTAL.

Capias extendi facias is a writ of execution issuable against a debtor to the Crown, and commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor. See EXTENT.

Capias in withernam was a writ formerly used in cases where the defendant in an action of replevin had obtained judgment for the redelivery of the goods, and the sheriff has returned *elongata* (q.v.). The *capias in withernam* commanded the sheriff to take other goods of the plaintiff to the value of the goods replevied, and deliver them to the defendant to be kept by him until the latter goods were returned. The practice is now obsolete.

Capias pro fine was a writ issued for the arrest of one who had been fined for an offence against a statute. The writ authorised his imprisonment until the fine was paid.

Capias pro fine (*or misericordia*) were words formerly inserted in the judgment in certain actions where it was for the plaintiff.

Capias utlagatum is a writ for the arrest of an outlaw. As outlawry has been abolished in civil cases, this writ is now only available in criminal proceedings, and even in those it is obsolete. (See OUTLAWRY.) A general *capias utlagatum* is against the person only, and commands the sheriff to arrest the defendant and produce him in court on a certain day; a special *capias utlagatum* is against the person, lands and goods, and commands the sheriff not only to arrest the defendant, but also to hold an inquisition as to his goods and lands, and to take possession of them on behalf of the king. In criminal cases this is also called a *capias utlagatum cum breve de inquirendo*.

Capiatur. Judgment *quod capiatur* was a judgment in which appeared the words *capias pro fine* (q.v.).

Capita, Distribution per. In the distribution of the personal estate of a person dying intestate, the claimants, or the persons who, by

law, are entitled to such personal estate, are said to take *per capita* when they claim in their own rights as in equal degree of kindred, in contradistinction to claiming by right of representation, or *per stirpes*, as it is termed. Thus, if the next of kin be the intestate's three brothers, A, B, and C, here his effects are divided into three equal portions and distributed *per capita*, one to each; but if A (one of these brothers) had been dead and had left three children, and B (another of these brothers) had been dead and had left two; then the distribution would have been by representation, or *per stirpes*, as it is termed, and one-third of the property would have gone to A's three children, another third to B's two children, and the remaining third to C, the surviving brother. See PER STIRPES.

Capital Felonies. Down to only a little more than a century ago, all felonies except mayhem and petty larceny were in theory capital, that is to say, punishable with death, but in many cases the person convicted was allowed benefit of clergy and in others the punishment of death was not invariably inflicted, transportation being frequently substituted.

Now the only capital felonies are:—(1) Murder, for which sentence of death must be passed by the judge (Offences against the Person Act, 1861, ss. 1-3) unless the convict be under sixteen (Children Act, 1908, s. 103). (2) Assault with attempt to murder or act endangering life committed in connection with attempted piracy (Piracy Act, 1837, c. 88). (3) Destruction, or attempted destruction, of royal arsenals, dockyards, magazines, stores or ships (Dockyards, etc., Protection Act, 1772, s. 1).

On conviction under the Acts of 1837 and 1772, sentence of death, instead of being pronounced, may be merely recorded, this being done at the Central Criminal Court under the Central Criminal Court Act, ss. 1, 3-7, and elsewhere under the Judgment of Death Act, 1823, ss. 1, 2; and the effect of recording is the same as if sentence had actually been passed and the offender reprieved (q.v.) in open court. The person against whom sentence is recorded may subsequently be executed if such a course be deemed proper; or, which is more probable, his sentence may be commuted to one of penal servitude or as the Crown may deem fit.

But sentence of death for any offence may neither be passed nor recorded in the case of any person under sixteen (Children Act, 1908, s. 103).

Treason is also punishable with death.

Capital Punishment. Under the law affecting all persons, other than those in the military and naval services of the Crown, the only offences punishable with death are the capital felonies (q.v.) for which the punishment is death by hanging, and treason (q.v.), the punishment of which is the same (Treason Act, 1814, s. 1; Forfeiture Act, 1870, s. 31) unless the Crown sees fit to alter the sentence to beheading (Treason Act, 1814, s. 2).

The enactment that sentence of death shall not be passed on or recorded against any person under the age of sixteen (Children Act, 1908, s. 103) applies to treason and, apparently, to cases tried before courts martial.

In the case of murder, the execution must take place within the prison where the offender is confined at the time of execution (Capital Punishment Amendment Act, 1868, s. 2). Execution for the other felonies still punishable with death must, it would seem, take place in public: but it is unlikely that any future execution will, in fact, be carried out elsewhere than in a prison.

Under the Navy Discipline Acts, 1866 and 1884, and under the Army Act, sentence of death may be passed by courts martial on offenders serving in the Navy and Army respectively for the offences and in the circumstances specified in those Acts.

Capite, Tenure in. *In capite*, in chief, or *en chef*, means "directly," "immediately," *sine medio*, *sans mesne*. Hence "tenure *in capite*" primarily means the tenure of very lord and very tenant (q.v.), or the relation between a tenant and his immediate feudal superior, as opposed to a mesne tenure (see MESNE); but the phrase was always applied especially to land held directly of the Crown, and at the present day it is used exclusively in that sense. (See TENURE.) 2. Tenure *in capite*, however, even when confined to the Crown, is an ambiguous expression. Formerly land might be held directly of the king in three manners. First, it might have been originally granted to the tenant by the king in his capacity of king or lord paramount; this was called tenure *ut de corona*; secondly, an honour, castle or manor held by a private person might come into the hands of the crown (*e.g.* by escheat), so that the persons holding lands of the honour became tenants of the king in his capacity of lord of the honour: this was called tenure *ut de honore*; thirdly, if A held land of B, a private person, in gross, and B's seignory escheated to the crown, then A became tenant of the king, not in his capacity of king, but as if he were an ordinary mesne lord: this was called tenure *ut de persona*. These distinctions were formerly important, for tenure *ut de corona* involved

many burthensome incidents which tenants of the king by tenure *ut de honore* and *ut de persona* were free from, because they did not become tenants of the king by their own free will. (See LIVERY.) Originally each of these tenures was called a tenure *in capite*, but about Henry VIII.'s reign the term *in capite* ceased to be applied to tenure *ut de honore* and *ut de persona*, and became appropriated to tenure *in capite ut de corona*, and it is this tenure to which the Act 12 Car. 2 refers when it abolishes tenure *in capite*. At the present day, therefore, there is no distinction between tenures of the Crown.

Capitula escaetrie. (Articles of the office of escheator.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, pp. 238-41) s.v. *Statutes of Uncertain Date*. It is not in the *Statutes at Large*. It sets out in great detail the matters into which an escheator was to inquire in order to see what he could claim for the Crown.

Capitula itineris. (The Articles of the Eyre) (q.v.). Printed amongst *Statutes of Uncertain Date* in the *Statutes of the Realm* (Vol. 1, p. 233-8); not in the *Statutes at Large*.

Capitula ruralia. Chapters or assemblies of the rural deans and the parochial clergy of every deanery. They were formerly held at first every three weeks, and afterwards every month. Another name was KALENDÆ (q.v.).

Capitulations. These are agreements, concluded between Christian States on the one hand and Mahommedan and other non-Christian countries on the other hand, under which certain immunities and privileges are secured to subjects of the Christian State while in the territories of the non-Christian State. The first capitulations were those between France and the Porte in 1535; and during the reign of Elizabeth capitulations in favour of English subjects were made between her and the Porte. In the middle of the last century first China and then Japan concluded capitulations with the United States of America and with most of the European Powers. The capitulations with Japan have now come to an end. The justification for capitulations is the absence of any system of law under which persons accustomed to Western legal institutions can reasonably be required to be tried; and Japan has now a legal system which cannot be regarded as uncivilised. The essence of capitulations is that the subjects of the State in whose favour they have been concluded form an extra-territorial (q.v.) community in no way subject to the criminal law of China (or whatever may be the particular Eastern State in question). See FOREIGN JURISDICTION.

Capituli agri. Headlands: the lands at the upper ends of the ridges of a tilled field. Compare CAUDA TERRÆ.

Caption. This now means the formal heading of an information, deposition, affidavit, recognizance, or indictment, stating before whom the information, etc., was taken or made.

When a justice takes, under the Criminal Law Amendment Act, 1867, s. 6, the deposition of a person dangerously ill and not likely to recover, the caption of the deposition must set out the particulars specified in the section.

"Caption" formerly meant arrest or seizure under civil process.

Capture is, in some cases, a mode of acquiring property. Thus, everyone may, as a general rule, on his own land, or on the sea, capture any wild animal, and acquire a qualified ownership in it by confining it, or absolute ownership by killing it. See ANIMALS FERÆ NATURÆ.

In international law, the strict rule is that when two nations are at war with one another, the movable property of the individual subjects of each nation is liable to capture by the other. In modern times, however, this rule has generally been subject to two qualifications. First, that the capture must be effected by persons holding a commission or authority from their Government; secondly, private property on land is exempt from capture; and, thirdly, that the property, other than ships or cargo, of those subjects of the enemy who are within the dominions of the other State at the time of the declaration of war is exempt from capture, except by way of reprisals. It follows from the first qualification that persons seizing an enemy's property on the high seas without a commission are guilty of piracy.

Capture is either by land or by sea. Property captured by an army on land is called "booty of war" (q.v.), and belongs to the Crown; but it has long been usual to grant it to the captors as a reward for their services. Questions of booty (*e.g.* as to the persons among whom it should be distributed) are commonly referred by the Crown to the High Court of Justice in its admiralty jurisdiction, pursuant to the Admiralty Court Act, 1840, s. 22.

Property captured at sea (called "prize") belongs to the Crown if captured by one of the King's ships, and used to belong to the capturing vessel if captured by a privateer. The

practice of privateering having been abolished in 1856 as between the principal European nations by the Treaty of Paris, questions of prize can now arise only in cases of capture by the King's ships. At the outbreak of a war requiring the services of the Navy, it has been customary for the Crown to issue a proclamation bestowing the proceeds of maritime capture upon the takers—that is, upon the officers and crews who have made or assisted in the capture; but the property in the prize does not pass to the captors until it has been condemned by a competent Prize Court. The High Court of Justice, in its admiralty jurisdiction, is the Court for deciding questions of prize in this country. See further on this point, the titles CONDEMNATION; PRIZE COURT.

Captors, whether of booty or of prize, are of two classes, actual and constructive, or joint. When a prize is taken at sea there is usually no doubt as to who is the actual captor, namely, the ship to which the prize strikes its flag. But it is important to observe that, even so, the phrase "actual captors" includes many others besides those who actually have taken part in the capture. The whole of the ship's crew may not be on board the ship at the time of the capture; or the prize may have been taken out of sight of the ship, and at a great distance from it, by a boat's crew detached from the ship. But in all these cases it is the ship, and not a part of the ship, that is held to take the prize. The whole of the ship's crew share, and are deemed actual captors. In the case of booty, a similar principle is applied by drawing the line between division and division, treating the division of an army as analogous (for this purpose) to a ship of war, so that when booty has been captured by any portion of a division, that division is, in the first instance, to be regarded as the actual captor. Joint or constructive captors are those who have assisted, or are taken to have assisted, the actual captors. But it is not every kind of assistance which constitutes a joint capture; for the leaning of the Courts is against claims by joint captors except in the two cases of association and co-operation; association takes place when two or more ships or divisions of an army are associated under the same immediate commander; co-operation is where the joint captors have assisted the actual captors by conveying encouragement to them or intimidation to the enemy. In the case of naval prize, the rule used to be that the joint captor must be in sight both of the prize and the actual captor to substantiate her claim; but this rule never applied to booty; and now it would appear that there is joint capture as between two ships or two divisions which are so intimately connected—by, for instance, wireless telegraphy—that they act as a single unit. Each case in fact must be judged on its own grounds, subject to the rule that services, to base a claim of joint capture, must have a direct and immediate effect in influencing the capture.

Where a capture is effected by his Majesty's naval or military forces in conjunction with an ally, the capture is said to be conjunct, and is divided between the allied forces (Naval Prize Act, 1865, s. 35): see also PRIZE BOUNTY.

Caput anni. New Year's Day.

Caput baroniæ. The chief seat or residence of a nobleman. Formerly, in the case of baronies by writ of summons, a *caput baroniæ*, upon failure of heirs male, descended to the eldest daughter instead of going to all daughters as co-parceners.

Caput lupinum. Literally, a head like a wolf's. An outlawed felon, being without the king's peace, was not entitled to the protection of the law and might be killed as if he were a wolf: but this extreme view seems to have been acted on only at a very early stage of the common law.

Caputagium = CHEVAGIUM (q.v.).

Carat. A weight used for diamonds and other precious stones. From, at any rate, the sixteenth century down to the eighteenth century it consisted of four grains (q.v.). Later, it consisted of three and one-sixth grains. Now what is known generally as the carat is the metric carat of 200 milligrammes (consisting of 3.864 grains—approximately $3\frac{1}{8}$ grains), the use of which, and of other metric carat weights, was sanctioned by Order in Council (1913—No. 1118) made October 14th, 1913, pursuant to the Weights and Measures Act, 1878, s. 8, and the Metric System (Weights and Measures) Act, 1897.

Anything made in whole or in part of gold is taken as being divided into twenty-four parts: and if the coin or other article in question consists of twenty-two parts of gold to two parts of alloy it is termed "twenty-two carat"—our gold coins (q.v.) are of this fineness—while if it is eighteen parts gold and six parts alloy it is termed "eighteen carat"; and so on as the proportions vary.

Formerly the term "carat" was loosely used as meaning a weight which was one twenty-fourth of an ounce troy or one twenty-fourth of a pound troy. See TROY WEIGHT.

— **Carcer ad homines custodiendos, non ad puniendos, dari debet** (*Co. Litt.* 260). (A prison

should be used for the custody, not the punishment of persons.) This would, however, seem from the context to have been said where the prison was for persons arrested upon civil process.

Cards. See GAMING.

Cardwell's Act. A popular title of the Railway and Canal Traffic Act, 1854.

Cargo. Goods shipped for carriage. The master of the vessel is the agent of the shipowner for the purpose of conveying the cargo safely to its port of destination, and so earning freight; but he is the agent of the owner of the cargo, where the latter cannot practically be communicated with, for the purpose of taking care of goods, checking their deterioration, and generally doing (under circumstances of danger to the goods) whatever their owner would prudently do. He may, as agent of the owner of the cargo, hypothecate it, as a means of preserving it and getting it to its port of destination; and he may, as agent of the shipowner, do the like whenever he would be authorised to hypothecate the ship (see titles BOTTOMRY; RESPONDENTIA; HYPOTHECATION), but in the latter case the cargo is only an indemnity, and the ship and freight, as being the primary liability, are compellable to reimburse the cargo any damages sustained by its owner from the hypothecation. Upon arrival of the goods at their port of destination, the carrier or master delivers them to the consignee or to his order, being first paid freight and not having sooner received notice of stoppage *in transitu*; in case the master has received such last-mentioned notice, his duty is to refuse delivery to anyone but the consignor, the latter paying freight. Both the consignor and the master are (severally) liable for a wrongful stoppage *in transitu*; hence the master should in a proper case interplead. See INTERPLEADER.

Carle. In the time of Domesday this meant a ceorl (q.v.). Compare the Anglo-Saxon HASCARLE (q.v.).

Carnal Knowledge. "Carnal knowledge means the penetration to any the slightest degree . . . by the male organ of generation" (Offences against the Person Act, 1861, s. 63). The definition applies to rape and other criminal sexual intercourse.

The unresisted carnal knowledge of a girl under thirteen is felony, punishable with a maximum sentence of penal servitude for life, and the attempt to commit the felony is a misdemeanour, punishable with a maximum sentence of two years' imprisonment. (Criminal Law Amendment Act, 1885, s. 4); see also INDECENT ASSAULT.

The unresisted carnal knowledge or attempted carnal knowledge of a female idiot or imbecile of any age, with knowledge of her condition, is a misdemeanour punishable with a maximum sentence of two years' imprisonment (*ib.*, s. 5 (2)). So also is the unresisted carnal knowledge or attempted carnal knowledge of a girl between thirteen and sixteen (*ib.*, s. 5 (1)); but the offender must be prosecuted within nine months of the alleged offence, and, if he be under twenty-three and charged for the first time with such offence, it shall be a defence that he had reasonable cause to believe the girl to be over sixteen. (Criminal Law Amendment Act, 1922, s. 2.)

A householder keeping a girl on his premises in order that she may be carnally known is guilty of felony if the girl is under thirteen, and of misdemeanour if she is under sixteen (Criminal Law Amendment Act, 1885, s. 6), and proof that he had reasonable cause to believe her to be sixteen is no defence. (Criminal Law Amendment Act, 1922, s. 2.)

To cause or encourage (whether by permitting association with prostitutes, etc., or otherwise) the unlawful carnal knowledge of a girl under sixteen is a misdemeanour punishable with a maximum of two years' imprisonment. (Children Act, 1908, s. 17; Children Act (1908) Amendment Act, 1910, s. 1.)

Caroome; Caroon. Formerly used in the City of London as meaning a licence generally or, more especially, a licence from the Lord Mayor to keep a cart.

Carrier. A carrier is a person who has received goods for the purpose of carrying them from one place to another for hire, either under a special contract or in the course of his business of a common carrier. A carrier who receives goods under a special contract is a bailee, and, in accordance with the general rules governing contracts of bailment, he is bound to use ordinary and average care in conveying the goods entrusted to him. See BAILMENT.

A common carrier is one who, by profession to the public, undertakes for hire to transport from place to place, either by land or water, the goods of such persons as may choose to employ him. Instances of common carriers are: the proprietor of a common stage coach or waggon, and the owner or master of a general ship. A railway company is not a common carrier of passengers, and is a common carrier only of those goods which it is

bound by statute to carry, or which it professes to carry without express stipulations limiting its liability. The peculiarity of a common carrier of goods is, that he is bound to convey the goods of any person who offers to pay his hire and that he is an insurer of goods entrusted to him, that is, he is liable for their loss or injury, in the absence of a special agreement or statutory exemption, and unless the loss or injury was caused by the act of God or the King's enemies. In this respect a common carrier is an exception to the general rule that bailees for reward are only liable for ordinary negligence. See BAILMENT; CARRIERS ACT; RISK NOTE.

Carriers Act, The. This is the popular title of the Carriers Act, 1830, 11 Geo. 4 and 1 Will. 4, c. 68. Its object was to modify the common law rule that a common carrier was liable for goods lost or injured in his custody, unless he could prove a special contract to the contrary. Its principal provisions are—(1) that no carrier by land is to be liable for loss of or injury to certain valuable descriptions of property (coin, jewellery, pictures, etc.) beyond the value of £10, unless their value was declared at the time of delivery; (2) that any carrier may require an increased rate of charge for such articles over the value of £10 by a notice affixed in his receiving house, and all persons delivering such articles are bound by the notice, without proof of its having come to their knowledge. The Railway and Canal Traffic Act, 1854, s. 7, contains further provisions limiting the liability of railway companies, canal companies, and railway and canal companies for loss or injury to horses, cattle, etc.

Carrucata. See CARUCATE; PLOUGH.

Carrying Costs. A verdict is said to carry costs when the party for whom the verdict is given becomes entitled to the payment of his costs as incident to such verdict. Where the damages given by a verdict were under forty shillings, the party obtaining such verdict was usually not entitled to his costs, and such a verdict was therefore said not to carry costs; but the judge might certify for costs. And now (except in an action under the Slander of Women Act, 1891—as to which see SLANDER), under R.S.C. Ord. 65, r. 1, every verdict carries costs, unless the judge for good cause certifies refusing the successful party his costs; and this rule holds good even when only farthing damages are recovered in an action for libel or slander. See SLANDER.

Carta de Foresta. This was a charter disafforesting many forests which had been unlawfully made, and generally mitigating the severity of the forest law. It was granted 6th November, 1217. (See *Stubbs' Select Charters* (9th ed.), p. 344, for a copy of the text.) The title *Carta de Foresta* is also applied to a statute of 25 Edw. 1, in the *Statutes of the Realm*. In the *Statutes at Large* the earlier statute 9 Hen. 3 is entitled the *Charta Forestæ*.

Carta de non ente non valet (*Co. Litt.* 36). (A charter concerning a thing not in existence is of no avail.) This is one of many maxims relating to charters which Coke has collected from Fleta and Bracton, and has set out on the page above mentioned.

Carta Mercatoria. This charter (also known as the *Statutum de Nova Custuma*) was granted by Edward I. in 1303 to certain foreign merchants. In return for certain customs duties it gave them extensive rights of trading, free from pannage and other municipal dues, and the right to a jury *e mediatate linguæ* in all pleas other than such as were capital. The charter is given at pp. 205-209 of Vol. II., Pt. I. of No. 12 of the Rolls Series.

The earlier statute of Acton Burnel (q.v.) applied only to English merchants.

Carta non est nisi vestigium donationis (*Pl. Com.* 160). (The deed is but the covering of the grant, that is to say, the grant, rather than the deed, is the really important thing.) This, however, is a quotation from Bracton, in whose time the deed was less important than it afterwards became. Compare QUI HAERET, ETC.

Cartarum super fidem, mortuis testibus, ad patriam, de necessitudine, recurrendum est (*Co. Litt.* 36). (Where the witnesses are dead the validity of charters must of necessity be decided by a jury)—or what corresponded more or less to a jury in the days of Fleta and Bracton.

Cart-Bote. See BOTE.

Cartel Ship. A ship sailing during a state of war under a safe-conduct which protects her from molestation or capture when voyaging for the purpose of the exchange of prisoners under a cartel.

Cartels are agreements between States as to the exchange of prisoners during war.

Cartis reddendis, De. A writ which anciently lay against one who illegally refused to deliver up charters of feoffment.

Cartway; Carriage-way. A track which is open to wheeled vehicles. Like a footway (q.v.) or a horseway (q.v.), it may be public or private.

Carucage. A tax anciently levied upon land. In the reign of John it was at the rate of three shillings on every carucate; but in the reign of Henry III. it was used as meaning a tax of two marks (about twenty-six shillings of the period—see SILVER COINS) on every knight's fee.

Carucate; Carvage; Carve. As much land as could be ploughed in one year with one plough (*caruca*). This ancient measure meant in different places anything from sixty to one hundred and twenty acres.

Case is (i) an abbreviation for "trespass on the case," as to which see ACTION ON THE CASE; TRESPASS. It also signifies (ii) a written statement of facts for the opinion of counsel; (iii) in House of Lords Privy Council practice, a statement prepared and printed by each party to an appeal, showing the facts on which he relies, and containing references to the evidence contained in the appendix (q.v.); the cases, therefore, correspond to some extent to the pleadings in an ordinary action, but differ from them in being prepared independently, for neither party sees his opponent's case until his own has been lodged; (iv) a written statement by an inferior Court or judge, raising a question of law for the opinion of a superior Court, as, for instance, the CASE STATED BY JUSTICES (q.v.; and see SPECIAL CASE). Under the British Law Ascertainment Act, 1859, any Court in His Majesty's dominions may remit a case to one of the superior Courts in any other part of His Majesty's dominions, desiring it to pronounce its opinion on a question as to the law administered by it; and under the Foreign Law Ascertainment Act, 1861, the superior Courts in His Majesty's dominions may remit a case to a Court of any foreign State with which His Majesty may have made a convention for that purpose, to ascertain the law of such State. See CROWN CASES RESERVED.

Case Stated by Justices. Under the Summary Jurisdiction Act, 1857, s. 2, after the hearing and determination by a justice or justices of the peace (including Metropolitan Police and stipendiary magistrates) of any information or complaint under their summary jurisdiction, either party to the proceedings, if dissatisfied with the determination as being erroneous in point of law, is entitled to require the justices or magistrate to state and sign a case, setting forth the facts and the grounds of the determination, for the opinion of a Divisional Court of the High Court of Justice. But where a later statute makes the decision of justices final, they have no jurisdiction to state a case.

A case may be stated from a dismissal as well as from a conviction.

The application to state the case must be made in writing and must be made within three days after the determination of the case (*ib.*); and it must be served on each of the justices who adjudicated, either personally or by leaving it at his residence. Service on the clerk or on some only of the justices is not sufficient.

Cash. This means either the actual coin which for the time being is in circulation, or (except in the case of the Bank of England) Bank of England notes, or (Currency and Bank Notes Act, 1914, s. 1 (1)) currency notes—popularly known as Treasury notes—for one pound and ten shillings.

Cassetur billa (let the bill be quashed) was an entry made on the record in a proceeding in the Mayor's Court (see FOREIGN ATTACHMENT) when the plaintiff withdrew his action before the defendant demanded the declaration or bill. The proceeding was also used in actions in the superior Courts commenced by bill when the plaintiff found that his action was misconceived and wished to commence a fresh one.

Cassetur breve. (Let the writ be quashed.) In the old common law practice, when the defendant in an action pleaded a sufficient plea in abatement, and the plaintiff could not deny it or demur, and did not wish to amend his declaration, he might enter on the roll a judgment that the writ be quashed, in order that he might be enabled to commence a new action. In practice, the prayer of judgment that the writ be quashed, and award that it be so, were copied on paper and delivered to the defendant's attorney or agent, the same as a pleading, and very often no entry was made on the roll or judgment signed. Under the present practice the plaintiff in such a case would give notice of discontinuance (q.v.).

Castigatory. See CUCKING-STOOL.

Casting an Essoin. The technical term for making the application known as an essoin (q.v.).

Casting Vote. This means the deciding vote which certain persons are empowered to give in the event of an equality of votes, so that there may be a majority of votes. Only the returning officer at an election or the chairman at various meetings ever has power to give a casting vote; and the question as to whether such chairman, etc., can give such a

vote depends entirely on the provisions of the statute applicable to the matter, the only exceptions to this rule being the Speaker of the House of Commons and the Chairman of the Committee of the Whole House, who, apart from statute, have the right to a casting vote, which is always with the "Ayes," and the chairmen of the various committees of the House who also have casting votes, which they give as they think fit.

The question of a casting vote arises neither in the House of Lords nor in any of the committees of that House, the rule being that on an equality of votes the "Noes" have it.

No casting vote can be given in the event of an equal division of the members of any court.

Castle-yard, or **Castleward,** was a form of tenure by knight-service, the duty of persons holding land by such a tenure being "to ward a tower of the castle of their lord, or a doore or some other place of the castle, upon reasonable warning, when their lords heare that the enemies will come, or are come in England." See KNIGHT'S SERVICE; TENURE.

Casual Ejector. Down to 1852, the nominal defendant, Richard Roe, in an action of ejectment was called the casual ejector, because by a legal fiction he was supposed casually, or by accident, to come upon the land or premises and turn out the lawful possessors. See EJECTMENT.

Casual Pauper. In the Poor Law this means "any destitute wayfarer or wanderer applying for or receiving relief" (Pauper Inmates' Discharge and Regulation Act, 1871, s. 3). See the Casual Poor Act, 1882, which provides that a casual pauper shall not discharge himself from the casual ward (the place provided for him by the poor law) before 9 a.m. on the second day following his admission (or, if he has been already admitted during the month, on the fourth day following his admission) nor before he has done the prescribed work.

Casual Poor. There is no statutory definition of this term: it is, however, used as meaning, with reference to any parish or union, a pauper, not being a wayfarer, who has neither an original nor a derivative settlement therein. The Casual Poor Act, 1882, its title notwithstanding, deals only with casual paupers (q.v.) and not with any separate class of poor.

Casu consimili. (In the like case.) A writ of entry granted where a tenant by the curtesy or tenant for life aliened in fee or in tail, or for another's life. It was brought by the person entitled to the reversion against the party to whom the tenant had so aliened to the prejudice of the person entitled to the reversion. It derived its name from the circumstance of the clerks in Chancery having by common consent framed it after the likeness of a writ termed *casu proviso,* in pursuance of the authority given them by the statute 13 Edw. 1. It was abolished by the Real Property Limitation Act, 1833, s. 36. See ACTION ON THE CASE.

Casu proviso. A writ given by the Statute of Gloucester (q.v.), c. 7, to a reversioner when a tenant in dower had aliened in fee or for life or in tail. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Casus belli. As between nations, this means some act justifying war.

Casus fortuitus non est sperandus; et nemo tenetur divinare (4 *Rep.* 66). (No reliance is to be placed on the happening of an event which may or may not happen; and, if it does happen, no one is bound to foresee that it will happen.)

Casus omissus. A matter which should have been, but has not been, provided for in a statute or in rules made under statutory authority.

Casus omissus et oblivioni datus dispositioni communis juris relinquitur (5 *Rep.* 37). (A point not covered [by statute law] must be decided in accordance with the common law.) "A *casus omissus,*" observed Buller, J., "can in no case be supplied by a Court of law, for that would be to make laws."

Cat. The popular title of the cat-o'-nine-tails with which criminals sentenced to whipping are whipped if they are over sixteen years of age. It is also used for the punishment of convicts and other convicted prisoners who commit breaches of discipline. It must be of a pattern approved by the Home Secretary. The approved pattern consists of a wooden handle about eighteen inches long, to which are attached nine tails or pieces of rope with several knots on each. See WHIPPING.

Catalla. Chattels (q.v.). The term applied originally only to cattle, and from it that word is derived.

Catallis captis nomine districtionis, De. An obsolete writ under which the doors and windows of a house within a borough could be taken by way of distress for rent issuing out of the house.

Catallis felonum, De. (Of the chattels of felons.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. I.,

p. 230), and also in the *Statutes at Large* (Vol. IX., App. p. 29), as of uncertain date.

Catallis reddendis, De. A writ which anciently lay against a bailee (q.v.) who had refused to deliver up the bailment (q.v.) to the owner thereof. This writ was replaced by the writ of detinue, and the latter continued in use up to the coming into force of the Judicature Acts.

Cat and Mouse Act. A popular title of the Prisoners (Temporary Discharge for Ill-health) Act, 1913.

Catascopus. An ancient synonym for archdeacon.

Catching Bargain is a bargain for a loan or payment of money made on oppressive, extortionate, or unconscionable terms, between a person having money and another person having little or no property immediately available but having property in reversion or expectancy. Relief against the unreasonable part of such a bargain is generally granted to the borrower. (See EXPECTANT HEIR.) Formerly, the rule was, that mere inadequacy of price was a sufficient ground for rescinding a sale or other dealing with a reversion; but this rule has been abolished, and it is now a question in each case whether there has been fraud or unfair dealing. (Sale of Reversions Act, 1867.)

Under the Moneylenders Act, 1900, s. 1, in any proceedings by a moneylender to recover money lent or to enforce any agreement or security, the Court may, if the transaction took place after the 31st October, 1900, reopen the transaction and give relief if satisfied that the bargain made was harsh and unconscionable.

Catchland. When Cowell wrote in 1607, there were in Norfolk some lands as to which it was not known to what parish they belonged. The tithes issuing out of them in any year belonged for that year to such incumbent, apparently of the adjacent parishes, as was able first to seize them. These lands were locally known as catchlands.

Catchpole; Cachepolus; Cacherellus. A bailiff.

Cathedra stercoralis. See CUCKING-STOOL.

Cattle. Derived from *catalla* (q.v.), and anciently used as synonymous with chattels. For long it has, however, been restricted in its meaning so as to apply only to animals. Some of the following animals are in various statutes brought within the definition of cattle: Bulls, cows, oxen, steers, bullocks, heifers, calves, sheep, lambs, horses, asses, goats, pigs. There is, in fact, no general definition of the term.

Cattle Gate; Beast Gate; Pasture Gate. A walk or pasture for one head of cattle. Cattle gates are most common in the northern counties. They are mostly of copyhold (q.v.) tenure, the ownership being in the lord of the manor subject to the right of the cattle-gate owner to pasture upon it.

Cattle Insurance Societies. Defined by the Friendly Societies Act, 1896, s. 8 (2), as "societies for the purpose of insurance to any amount against loss of neat cattle, sheep, lambs, swine, horses, and other animals by death from disease or otherwise." If existing before 1st January, 1897, that Act applies (*ib.*, s. 101 (1)); if formed after that date they may be registered under the Act (*ib.*, s. 8). See FRIENDLY SOCIETY.

Cauda terræ. The end of a ridge of arable land.

Causa causans. The immediate cause: the last link in the chain of causation. It is to be distinguished from *causa sine qua non*, which means some preceding link but for which the *causa causans* could not have become operative.

Causa ecclesiæ publicis causis æquiparatur (*Co. Litt.* 341). (The cause of the Church is on the same footing as public causes.) Compare SUMMA RATIO, ETC.

Causa matrimonii prælocuti. A writ of entry which lay where a woman had given lands to a man, with the intent that he should marry her, and he afterwards refused to marry her. The writ did not lie where a man, with like intent, had given lands to a woman and she afterwards refused to marry him. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Causa mortis. Because of death. See DONATIO MORTIS CAUSA.

Causa proxima. The immediate cause.

Causa proxima non remota spectatur (*Bac. Max. Reg.* 1). (The immediate, not the remote cause, is to be considered.) This maxim was formerly used in connection with policies of marine insurance. The principle enunciated in it is now expressly set out in s. 55 of the Marine Insurance Act, 1906.

Causæ dotis, vitæ, libertatis, fisci, sunt inter favourabilia in lege (*Jenk. Cent.* 281). (Causes of dower, life, liberty, revenue, are among the favourable things in law.) The law is inclined to favour one claiming dower, life, liberty, or money due to the public.

Causam nobis significes quare. When the

mayor of a town failed to give seisin (q.v.) of lands to a grantee of the king, this writ was anciently issued requiring him to show cause for his failure to give seisin.

Cause. Before the Judicature Act, 1873, "cause" was the generic term for ordinary civil proceedings, whether at law or in equity, and therefore included actions and suits, but not statutory proceedings in equity commenced by petition, motion, summons, &c., which were and are known as "matters." Since the Judicature Acts came into operation, the word "cause" has practically been superseded by "action." See ACTIONS AND MATTERS IN THE HIGH COURT.

In the Ecclesiastical Courts, causes are divided into plenary and summary. Plenary causes are those in which the order and solemnity of the law has to be observed exactly so that if there be the least infringement or omission of that order, the whole proceedings are annulled; and in these there must be a contestation of suit, a term to propound all things, and a term to conclude. Summary causes are those in which such order is dispensed with. See LITIS CONTESTATIO.

Cause Book. The books at the Central Office of the Supreme Court in which (Ord. 5, r. 13) are recorded the filing of the copies of writs of summons. These copies are left with the officers to whom the writs are presented for the purpose of having them sealed (*ib.*, r. 12). In them there are also entered (Ord. 61, r. 20) the date of every order, judgment, or certificate in every cause or matter.

Cause Lists. These are lists in which the several actions and matters for hearing in the Divisions, and Courts of Divisions, of the Supreme Court are set down in succession as presented for entry in the lists.

The Daily Cause List is published each evening during the sittings and shows the cases set down for hearing in the Supreme Court on the following day. Similar cause lists are published for the House of Lords, the Privy Council, and the Mayor's and City of London Court.

Cause of Action means the fact or combination of facts which give rise to a right of action. Thus in the case of a simple tort (*e.g.* an assault or trespass), the cause of action is the wrongful act; in the case of a breach of contract, the cause of action consists of two things, the making of the contract and breach of it, and each of these may be more or less complicated. The phrase is of importance chiefly with reference to the Statutes of Limitation and the jurisdiction of certain Courts. Thus, if A. incurs a debt while he is abroad, the cause of action is not complete, and therefore the Statute of Limitations does not begin to run until he brings himself within the jurisdiction of the English Courts. Again, the jurisdiction of a Court is frequently limited to cases where the "cause of action" arises within a certain district or county. Here the phrase may mean either the cause of action in the proper sense of the word (called for distinction the "whole cause of action"), or the act on the part of the defendant which completes the cause of action, *e.g.* the breach of a contract.

"Cause of action" formerly sometimes meant a person having a right of action. Thus, where a legacy was left to a married woman, and she and her husband brought an action to recover it, she was called in the old books the "meritorious cause of action."

Caution; Cautioner. Under the Land Transfer Act, 1875, ss. 53, 54, regulating the registration of land, any person interested under any unregistered instrument, or interested as a judgment creditor, or otherwise howsoever, in any land or charge registered in the name of any other person, may lodge a caution with the registrar to the effect that no dealing with such land or charge be had until notice has been served on the cautioner or person who has lodged the caution. And by s. 60 of the same Act, any person claiming such an interest in any land not already registered as entitles him to object to any disposition thereof being made without his consent may lodge a caution with the registrar to the effect that the cautioner is entitled to notice of any application for the registration of the land.

A caution on land is like a notice in lieu of distringas (q.v.), generally known as a stop-order, on stock; it gives the cautioner no interest in the land, but merely entitles him to a notice, so as to enable him to take proceedings (*e.g.* obtain an injunction or issue execution) before any dealing with the land, by which his right might be barred, can take place. See INHIBITION.

In ecclesiastical law, a caution is a security for the performance of a duty, and is said to be of three sorts: (1) *cautio fidejussoria*, as where the person binds himself with sureties to do something; (2) *cautio pignoratitia* or *realis*, as where he engages goods or mortgages land for the performance; and (3) *cautio juratoria*, where he takes a corporal oath to perform the duty.

Cautione admittenda. A writ which anciently lay against a bishop who held an

excommunicated person in prison for contempt notwithstanding that such person had offered sufficient caution or security to obey the orders and commandments of the Church for the future. It may be noted that nowadays a bishop has no power to imprison even an excommunicated person who refuses to find security for his future behaviour.

Caveat; Caveator. A caveat is an entry made in the books of the offices of a registry or Court to prevent a certain step being taken without previous notice to the person entering the caveat (who is called the caveator).

In probate practice, a caveat is entered in the caveat books by a person who wishes to oppose the issue of a grant of probate or letters of administration (Contentious Probate Rules, r. 7) and has a sufficient interest to entitle him to do so. (See INTEREST.) It is a notice to the officers of the registry requiring them to let nothing be done in the goods of the deceased, that is, to let no grant be issued, without a "warning" to the caveator; it remains in force for six months only, unless renewed (*ib.*, r. 8), and its effect is to stop all proceedings for the purpose of obtaining a grant of probate or administration in respect of the goods of the deceased until the caveat is "subducted," that is to say, withdrawn, or expires, unless a "warning" is taken out When anyone applying for a grant finds himself stopped by a caveat, he can take out a "warning" (*ib.*, r. 11), that is to say, a notice requiring the caveator to cause an appearance to be entered for him within six days. If no such appearance is entered the caveat can be "cleared off" (under r. 67 of the Non-Contentious Probate Rules), that is to say, made of no effect. If the caveator appears and refuses to consent to a grant or to "subduct" his caveat, the applicant for the grant must either take out a summons requiring the caveator to show why the caveat should not be cleared off, or, if anything more than the question of interest arises, he must commence a probate action against the caveator.

In Admiralty practice, where the owner of a ship or cargo, etc., knows that an action is about to be instituted and wishes to avoid having such ship, etc., arrested, he may enter a caveat against the issue of a warrant for the arrest of such ship, etc. (Ord. 29, r. 11), if he files an undertaking to enter an appearance and give bail in any action against such ship, etc. (*ib.*, r. 12); and if, notwithstanding the caveat, any person, without good reason, causes such ship, etc., to be arested, then such person is liable to be condemned in damages and costs (*ib.*, r. 18). In any case in which a solicitor desires to prevent the release of any property under arrest, he shall file in the registry a notice, and thereupon a caveat against the release of the property shall be entered in the Caveat Release Book (*ib.*, r. 8), so as to prevent the release of the property without notice to him. A person entering a caveat without sufficient reason is liable for costs and damages (*ib.*, r. 10). A caveat remains in force for not more than six months (Ord. 64, r. 15).

In ecclesiastical practice, a caveat is entered in a spiritual Court to prevent a licence, dispensation, faculty, institution, or the like, from being granted without the knowledge of the party who enters the caveat.

Caveat actor. He who does any act does it at his own peril; but apart from negligence, contract or malicious intention, this is not a rule of the common law. Thus, where a man shooting pheasants fired at a bird and hit with a pellet a beater who was not in the line of fire, and who was hit only because the pellet had glanced off a tree, it was held that the man who fired the shot was not liable in damages for the injury to the beater.

Caveat emptor. (Let the buyer beware.) At common law this maxim meant, with regard to sales of chattels, that when a buyer of goods had required no warranty he took the risk of quality upon himself, and had no remedy if he had chosen to rely on the bare representation of the vendor, unless he could show that representation to have been fraudulent. To this rule there were many exceptions. Thus, if a chattel was made or supplied to the order of the purchaser, there was an implied warranty that it was reasonably fit for the purpose for which it was ordinarily used, or for the special purpose intended by the buyer if that purpose had been communicated to the vendor. At common law also, on a sale of an ascertained specific chattel by an innocent vendor, he did not thereby impliedly warrant the title to it, though to this rule there were so many exceptions that the law was in practice governed by the exceptions rather than by the rule. See WARRANTY.

The law on both points is now embodied in sections 12 and 14 of the Sale of Goods Act, 1893.

Section 14 enacts:—

"Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose

of goods supplied under a contract of sale, except as follows:—

"(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose; provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

"(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

"(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

"(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith."

Section 12 enacts:—

"In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

"(1) An implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

"(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods;

"(3) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made."

Caveat emptor; qui ignorare non debuit quod jus alienum emit (*Hob.* 99). A purchaser must be on his guard; for he has no right to remain in ignorance of the fact that what he is buying belongs to someone other than the vendor. He must, in fact, investigate the title to lands which he is buying. See ALIUD EST CELARE, ETC.

Caveat venditor. (Let the seller beware.) This is a maxim of the civil law.

Caveat viator. (Let the traveller beware.) This is not law. In the imaginary case of the owner of a yard with dangerous holes in it who allowed the public to pass through the yard, Baron Alderson, in 1855, said "*caveat viator*," meaning thereby that anyone passing through the yard did so at his own risk. But, in view of later decisions, it may now be taken that in such circumstances the owner of the yard would be liable for injuries caused by the dangerous state of the yard.

Cavers. Persons guilty of offences, relating to mines in Derbyshire, which are dealt with in the BERGHMOTE.

Celibacy (of the Clergy). Before the Reformation, this was obligatory under the canon law, and was enforced by various Acts of Parliament. The effect of the statutes 2 & 3 Edw. 6, c. 21, and 5 & 6 Edw. 6, c. 12, was to make the marriage of all persons in Holy orders lawful for all purposes. Both of these Acts were repealed in 1553 by the statute 1 Mary (sess. 2), c. 2; and in deference to the well-known views of Queen Elizabeth, they remained repealed until they were revived in 1603 by the statute 1 Jac. 1, c. 25. But the 32nd Article (1562) had meanwhile declared: "Bishops, priests and deacons are not commanded by God's law either to vow the estate of single life or to abstain from marriage: Therefore it is lawful for them, as for other Christian men, to marry at their own discretion, as they shall judge the same to serve better to godliness." That, since 1562, has been the law of the Church; and since 1603 it has also been the law of the land.

Cellar. For the purposes of the Public Health Act, 1875 (38 & 39 Vict. c. 55) (which does not apply to London), the term "cellar" includes any vault or underground room, and no cellars may be used as a dwelling unless so used on 11th August, 1875 (s. 71). A cellar is used as a dwelling if anyone passes the night therein (s. 74). Other provisions as to the construction and use of cellars are contained in ss. 26, 47 (2), 72, 73 and 75 of the same Act, in the Towns Improvement Clauses Act, 1847, ss. 73, 113, 114, and in the Police Clauses Act, 1847, s. 28 (all of which Acts, by virtue of the Public Health Act, 1875, ss. 160, 171, apply to all urban districts), and in the Public Health Acts Amendment Act, 1890, s. 35, which last-mentioned Act is an adoptive (q.v.) Act.

The use of cellars as bakehouses is governed

by the Factory Act, 1901, s. 101, the most important provision of which is that no cellar may be used as a bakehouse unless it was so used on 17th August, 1901.

Celluloid. As to provisions for the prevention of fire in premises where raw celluloid is stored, see the Celluloid and Cinematograph Act, 1922.

Cenegild. Compensation payable in the Anglo-Saxon period to the relatives of a man who had been killed. It was payable by the person who had caused the death in question.

Cenninga. Before the Conquest this was a notice served by a buyer upon the seller of things informing the seller that the thing had been claimed by a third party, and requiring the seller to appear and show that he had the right to sell.

Censaria. Anciently this meant a tenement let at a non-variable rent.

Censer; Censure. Anciently in certain manors in the counties of Devon and Cornwall every person living in the manor was obliged to pay one penny per annum to the lord after he attained the age of sixteen. The money so paid was known as censure, and the persons paying it were known as censers.

Censorship. See PRESS.

Censuarius. The same as gavelman (q.v.).

Censure, in ecclesiastical law, is a spiritual punishment and consists in withdrawing from a baptized person (whether belonging to the clergy or the laity) a privilege which the Church gives him, or in wholly expelling him from the Christian communion. The principal varieties of censures are admonition, penance, suspension, excommunication, sequestration, deprivation, degradation: see those titles.

Census. The numbering of the inhabitants of Great Britain, which first took place in 1801, and which has been taken every tenth year since then. Up to and including 1911 this was done under a special Act passed in contemplation of each census, the last of such Acts being the Census (Great Britain) Act, 1910. The Census Act, 1920, makes any further Census Acts unnecessary; for it provides that the King may by Order in Council from time to time direct that a census be taken of Great Britain or of any part thereof; but this is subject to the proviso that at least five complete years must have elapsed between one census and the next census and that the Order cannot be made until a draft thereof has been before Parliament for at least twenty days without an address against it being passed by either House. See MONMOUTHSHIRE.

Census of Production. The Census of Production Act, 1906, directed that a census of production should be taken in the year 1908 (s. 1) under the superintendence of the Board of Trade (s. 2) from returns to be furnished by the employers of labour specified in the schedule to the Act (s. 3), such returns to show, in respect of the year 1907, the nature of the trade or business, the output thereof, the number of working days, the number of persons employed, the power used or generated, and such other matters, except the amount of wages, as might be necessary for the purpose of enabling the quantity and value of production to be ascertained (s. 3).

By virtue of an Order in Council made 28th October, 1912, under the authority of section 1 of the Act of 1906, another census of production was taken in 1913 in respect of the year 1912.

The effect of the Census of Production Act, 1917, is that the Board of Trade, without in any way being supervised or controlled by Parliament, as they were under the Act of 1906, can now direct a census of production or a partial census of production, to be taken as often as they think fit, provided that they do so by an order dated at least one year before the commencement of the year in which the census is to be taken.

Centenarii. Jacob, and the copyists of Jacob, state that *centenarii* were petty judges or under-sheriffs: and this is stated upon the authority of 1 Vent. 211. But the only thing at all resembling *centenarii* upon the page of Ventris in question is a report relating to the "*trover de duabus centenis plumbæ ure*" (trover of two hundredweight of lead ore).

Central Body. A body constituted for the whole of the administrative county of London under the Unemployed Workmen Act, 1905, s 1, for the same purposes as the Distress Committees (q.v.), which are subordinate to it.

Central Criminal Court. The Old Bailey Sessions, which from time immemorial had exercised criminal jurisdiction over approximately the same area as that now within the jurisdiction of the Central Criminal Court, were abolished by the Central Criminal Court Act, 1834, which substituted for them the Central Criminal Court. The Central Criminal Court is a Court having jurisdiction to try all offences committed within the City of London, the county of Middlesex, and certain suburban parts of Essex, Kent and Surrey. The judges or commissioners are the Lord Mayor of London, the Lord Chancellor, the judges of the High Court, the Dean of Arches, the

aldermen of London, the Recorder and Common Serjeant of London, the judge of the City of London Court, and other persons appointed by the Crown (Central Criminal Court Act, 1834, s. 1). Commissions of oyer and terminer and gaol delivery (q.v.) are issued to the Court, under which any two or more of the judges hold sessions in the City of London, or its suburbs, at least twelve times a year, to "inquire of, hear, determine and adjudge" all treasons, felonies and misdemeanours committed within the district of the Court (ss. 2, 15). Under the Central Criminal Court Act, 1856, s. 1, the King's Bench Division may order any indictment or inquisition for an offence committed out of the jurisdiction of the Central Criminal Court to be tried in that Court, and under the Corrupt and Illegal Practices Act, 1883, s. 50, the High Court may, at the instance of the Attorney-General, order certain indictments for corrupt practices to be tried in the Central Criminal Court. The Court also has jurisdiction in respect of offences committed on the high seas, formerly within the jurisdiction of the High Court of Admiralty (Central Criminal Court Act, 1834, s. 22). Under the Winter Assizes Act, 1876, s. 5, and the Spring Assizes Act, 1879, s. 2, the jurisdiction of the Court may be extended by Order in Council to any neighbouring county, or part of a county, in the months of November, December, January, March, April and May.

See PALMER'S ACT; DEATH WARRANT; LONDON SESSIONS.

Central Office. The Central Office of the Supreme Court of Judicature was established in 1879 under the Judicature (Officers) Act, 1879, in order to consolidate the offices of the masters and associates of the Common Law Divisions, the Crown Office of the Queen's Bench Division, the Record and Writ Clerks', Report, and Enrolment offices of the Chancery Division, and a few others. The Central Office is divided into the following departments, and the business and staff of the office are distributed accordingly:—(1) Writ, Appearance and Judgment; (2) Summons and Order; (3) Filing and Record; (4) Taxing; (5) Enrolment; (6) Judgments and and Married Women's Acknowledgments; (7) Bills of Sale; (8) King's Remembrancer; (9) Crown Office; and (10) Associates. See the titles of the various officials and title MASTERS OF THE SUPREME COURT.

Century. Occasionally used anciently as a synonym of hundred (q.v.) in the sense of a territorial division.

Ceorl; Churle. A poor freeholder or freeman in Anglo-Saxon times; he might become a *theyn*, and therefore practically an *eorl*, by possessing six hides of land (600 acres) with a church and mansion of his own.

Cepi corpus. When a writ of *capias* (q.v.) or attachment (q.v.) is directed to the sheriff for execution, he is commanded to return it within a certain time, together with the manner in which he has executed it. If the sheriff has taken the defendant, and has him in custody, he returns the writ, together with an indorsement on the back stating that he has taken him, which is technically called a return of *cepi corpus*.

Cepit. (Did carry away.) Until 1753 (see FRENCH) an indictment for the common law offence of larceny had to contain the averment that the prisoner *cepit et asportavit* See ASPORTATION; TAKE AND CARRY AWAY, LARCENY.

Cerage; Ceragium. An ancient payment, made twice a year, for the purpose of defraying the cost of wax candles in a church. Popularly known as waxscot.

Certa debet esse intentio, et narratio, et certum fundamentum, et certa res quæ deducitur in judicium (*Co. Litt.* 303). (The intention, the declaration, and the cause of action ought to be clear, and so ought the point which the court is asked to decide.) The maxim relating to the requirements of good pleading.

Certainty. This, in the terminology of the old practice before the Judicature Acts, was a "plain, clear and distinct setting down of things so that they may be understood." As to what was necessary for such understanding, there was much learning. Now, in pleading, the rule, as laid down by Lord Justice Bowen, is that there must be "as much certainty and particularity as is reasonable, having regard to the circumstances." But now pleadings, although they must be precise, must also be concise: and conciseness was not a characteristic of the old practice. See UNCERTAINTY.

Certificando, De. A writ which anciently lay to compel one to certify.

Certificando de recognitione stapulæ. An obsolete writ commanding the Mayor of the Staple (q.v.) to certify to the Lord Chancellor a statute staple (q.v.) taken before the mayor.

Certificate. A certificate is a statement in writing by a person having a public or official status concerning some matter within his knowledge or authority. The principal

varieties of certificates relating to legal matters are the following:—

Analyst.—Under the Fertilizers and Feeding Stuffs Act, 1906, s. 3 (5), the certificate of the analyst to whom an article has been duly sent for analysis pursuant to the Act is evidence of the facts stated therein, unless the defendant requires that the analyst be called. The Sale of Food and Drugs Act, 1875, s. 21, dealing with analysts' certificates as to drugs and as to articles intended for human consumption, is to the like effect.

Associate.—Where at the trial of an action at *nisi prius*, or at the assizes, the judge directs judgment to be entered, the associate gives a certificate to that effect, which is produced to the officer in charge of the judgment book when judgment is entered. (R. S. C., Ord. 36, r. 42). As to the former practice, see POSTEA.

Charge.—When the proprietor of land registered under the Land Transfer Act, 1875, creates a charge on it, the proprietor of the charge is entitled to a certificate of charge under the seal of the office (s. 22); if he transfers the charge, the transferee is entitled to a fresh certificate (s. 40). It is *primâ facie* evidence of its contents (s. 80). See CHARGE.

Counsel.—In common law practice, when a summons at chambers is argued by counsel, it is necessary to obtain the certificate of the judge or master that it was a case requiring the services of counsel: otherwise the successful party will not be allowed the costs of counsel's attendance. On the Chancery side, the attendance of counsel at chambers is always certified unless it is expressly disallowed.

Death.—See REGISTRATION OF DEATHS.

Discharge.—A bankrupt intending to apply for his discharge must produce to the registrar a certificate from the official receiver specifying all his creditors of whom the receiver has had notice (Bankruptcy Rules, 1915, No. 227).

Dismissal.—Where a person is charged before justices of the peace with a common or aggravated assault or battery, and they consider the offence not proved, or find the act to have been justified or so trifling as not to merit punishment, and they accordingly dismiss the complaint, they are bound to give the defendant a certificate of dismissal, which operates to release him from all other proceedings, civil or criminal, for the same cause (Offences against the Person Act, 1861, ss. 44, 45).

Incorporation. When a company is registered under the Companies (Consolidation) Act, 1908, the registrar is bound to give a certificate stating that the company is incorporated, and (if the fact be so) that it is limited (Companies (Consolidation) Act, 1908, s. 16 (1)). Such certificate is conclusive evidence that all the requisitions of the Act in respect of registration have been complied with and that the registration is valid (s. 17).

Land.—A land certificate is a certificate under the seal of the Land Registry, containing a copy of the registered description of a certain piece of land on the register, the name and address of the registered proprietor, and other particulars (Land Transfer Act, 1875, s. 10). It is *primâ facie* evidence of the matters contained in it (s. 80).

Master.—When a question in an action or suit in the Chancery Division is referred to chambers (as where accounts or inquiries are directed, or a receiver is ordered to be appointed, or a conveyance or other instrument is directed to be settled in chambers), the result of the proceedings is stated in the master's certificate, which is in the nature of a report to the Court of the matters referred to him. In administration actions, certificates may be either general or separate. A general certificate embraces the result of all the proceedings taken at chambers under the judgment or order; a separate certificate comprises the result of only some one or more of them. Separate certificates are made in cases where it is not desirable to wait till the whole proceedings are completed. Thus, in an action for the administration of the estate of a deceased person, where there are debts remaining unpaid, a certificate of their amount is taken at the earliest possible moment, in order that they may be paid. When a party interested thinks the certificate wrong, he may apply to the judge, within a certain time, to vary or discharge it (R. S. C., Ord. 55, r. 70).

Mortgage.—Under the Merchant Shipping Act, 1894, ss. 39-43, the owner of a registered ship may obtain a certificate of mortgage, enabling the person named in it to raise money by mortgage of the ship to a limited amount. The form and object of certificates of mortgage are similar to those of certificates of sale, *infra*.

Paymaster-General.—The paymaster-general, upon a request signed by or on behalf of any person claiming to be interested in any funds in Court standing to the credit of an account specified in such request, may, in his discretion, issue a certificate of the amount and description of such funds (S. C. Funds Rules, 1915, r. 96).

Registration or *Registry.*—When an Act of

Parliament requires any document or fact to be registered, it generally provides for the delivery by the registrar of a certificate stating that the registration has been effected. Such a certificate is usually *primâ facie* evidence of the facts stated in it. To this class belong the certificates of charge and incorporation and land certificates mentioned in this article.

Sale.—Under the Merchant Shipping Act, 1894, ss. 39-44, the registered owner of a ship may apply to the registrar for a certificate of sale, which contains a description of the ship, a list of registered mortgages, etc., and an appointment by the owner of a person to sell the ship on his behalf, with any limitations as to the price, place and time at which the sale is to be made which the owner may desire to impose. The object of obtaining a certificate of sale is to enable the owner to sell his ship out of the country where its port of registry is situate. See MORTGAGE, *supra*.

Sheriff.—When a writ of inquiry (q.v.) has been executed, but the sheriff thinks that the defendant ought to have an opportunity to set the execution aside, he may endorse on the writ a certificate to that effect, which will prevent the plaintiff from signing final judgment until the defendant has had time to move.

Solicitor.—No person can practise as a solicitor unless he holds a certificate duly stamped (see the Stamp Act, 1891, ss. 43-48). For a solicitor practising within ten miles of the General Post Office, London, the annual stamp duty is £9; for other solicitors it is £6; but in each case only half-duty is payable for the first three years.

Special Jury.—Where an action is tried by a special jury, the party at whose instance it is so tried has to bear all the expenses caused by that mode of trial, and is not allowed, upon taxation of costs, any more or other costs than he would have been entitled to if the cause had been tried by a common jury, unless the judge, within a reasonable time after the verdict, certifies that it was a proper cause to be tried by a special jury (Juries Act, 1825, s. 34).

Veterinary Inspector.—Under the Diseases of Animals Act, 1894, s. 267, a certificate of the veterinary inspector under that Act is conclusive evidence of the fact that an animal is or was infected with the disease specified in the certificate.

See ORIGIN. As to share certificates, see SHARE.

Certificate, Trial by. A mode of trial which is now practically obsolete; it was resorted to in cases where the fact in issue lay out of the cognizance of the Court, and the judges, in order to determine the question, were obliged to rely upon the solemn averment or information of persons in such a station as afforded them the clearest and most competent knowledge of the truth. Thus, when a custom of the city of London was in issue, it was tried by the certificate of the mayor and aldermen certified by the mouth of their recorder; and this is still the case. So, in the action of dower, when the tenant pleaded in bar that the demandant was never "accoupled" to the alleged husband in lawful matrimony, and issue was joined upon that, the Court used to award that it should be tried by the diocesan of the place where the parish church in which the marriage was alleged to have been had was situated, and that the result should be certified to them by the ordinary at a given day. Now, if the like point were raised in an action brought to recover dower, it would be decided upon the evidence in the action.

The modern substitute for trial by certificate is a reference to arbitration (q.v.), by order of the Court.

Certificatio assisæ novæ disseisinæ. In the time of Bracton this "certification of an assise of novel disseisin" was a means of obtaining what would now be called a new trial of a matter which had been decided by the assise of novel disseisin. It was obtained upon the writ of certificate, as to which, F. N. B., 421.

Certified copy is a copy of a document, signed and certified as a true copy by the officer to whose custody the original is entrusted. By the Evidence Act, 1851, s. 14, it is enacted that whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, etc., provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted. See COPY.

Certiorari (in ordinary cases) is a writ directed to an inferior Court of record, commanding it to "certify" to the King in the High Court of Justice some matter of a judicial character. It is used to remove civil causes from inferior Courts of record into the High Court (*e.g.*, from a County Court or the Mayor's Court), where it is desirable that they should be tried in the superior Court, or to remove an indictment from an inferior criminal Court (*e.g.*, quarter sessions) into the Central Criminal Court or the King's Bench Division, or from the Central Criminal Court

into the King's Bench Division, in order the better to consider and determine the validity of the indictment and the proceedings thereon, and to prevent a partial (*i.e.*, biased) and insufficient trial. The inferior Court obeys the writ by transmitting the record of the proceedings (or, in some cases, a transcript of it) to the superior Court. The writ is also used to bring up for the purpose of being quashed orders, alleged to be erroneous, of courts of summary jurisdiction; and in such cases the writ, if applied for within six months (Crown Office Rules, r. 21), will lie (1) where there has been want or excess of jurisdiction when the inquiry before justices began or during its progress; (2) where in the exercise of jurisdiction there has been error on the face of the adjudication; (3) where there has been an abuse of jurisdiction, as by disregard of the essentials of justice or of the conditions regulating the functions and duty of the Court; (4) where the Court is shown to have been disqualified by reason of likelihood of bias or interest, and (5) where there has been fraud.

Where a peer or peeress is indicted of treason or felony, the indictment is removed into the House of Lords, or (if it is not sitting) into the Court of the Lord High Steward, by writ of *certiorari*.

Cert money; Certum letæ. This was head-money payable anciently by the inhabitants of certain manors to the lord, and sometimes to the hundred, in order to secure the certain holding of the court leet.

Certum est quod certum reddi potest (9 *Co.* 47). (That which is capable of being made certain is to be treated as certain.) Thus every estate for years must have a certain beginning and a certain end; but where there is lease for three lives in being and twenty-one years thereafter, it is held that the term of twenty-one years has a certain beginning, because, though the date of its commencement is at first unknown, that date becomes certain upon the dropping of the last life.

Cerura. Anciently this meant a mound, fence or enclosure.

Cervisarii. This is said to have meant, in Anglo-Saxon times, tenants who paid a rent known as "drinclean."

Cess; Cesse. An assessment or tax, mentioned in the statute 22 Hen. 8, c. 3. The word is still used in Ireland in the combination "county-cess," which means a rate levied for the administrative expenses of a county.

Cessante causâ, cessat effectus (*Co. Litt.* 70). (When the cause ceases, the effect ceases.) See CESSANTE RATIONE LEGIS, ETC.

Cessante ratione legis, cessat ipsa lex (*Co. Litt.* 70). (The reason of the law ceasing, the law itself ceases.) Coke cites the maxim as illustrating the rule of law that, where the king granted lands to a body corporate to be held by knight's service, homage, wardship, then marriage and relief were not due in respect of the land while held by such body, but became due if such body aliened the land to an individual.

Cessante statu primitivo, cessat derivativus (8 *Co.* 34). (The original estate ceasing, that which is derived from it ceases.) Thus a lease for years by a tenant for life will determine upon his death unless it be made under a statutory power or with the consent of the remainderman.

Cessat executio. The suspending or stopping of execution. If, in an action of trespass against two persons, judgment was given against one, and the plaintiff took out execution against him, the writ would abate as to the other, because there had to be a *cessat executio* until it was tried against the other defendant; but that is not now the case.

Cessavit was an action which lay where a man who held lands by rent or other services neglected or *ceased* to perform his services for two years together. The action enabled the plaintiff to recover the land itself, unless the tenant tendered the arrears of rent (if any), and damages before judgment, and gave security for the future performance of the services. The action was abolished by the Real Property Limitation Act, 1833, s. 36.

Cessavit de cantaria. Under the Statute of Westminster II. c. 41, this writ lay for one who had made over lands to any clerk or any religious house for religious or charitable purposes, if such purposes were not carried out within two years.

Cesse. A tenant of land was said to *cesse* when he neglected or *ceased* to perform the services due to the lord. See CESSAVIT.

Cesser. The cesser of a term, annuity, or the like, takes place when it determines or comes to an end. The expression is chiefly used with reference to long terms of a thousand years, or some similar period, created by a settlement for the purpose of securing the income, portions, etc., given to the objects of the settlement. (As to these, see SETTLEMENT.) When the trusts of a term of this kind are satisfied (as where it was created to secure an annuity, and the annuitant has died), it is desirable that the term should be put an end to, and with this object it was formerly usual to provide in the settlement itself that as soon

as the trusts of the term had been satisfied, it should cease and determine; this was called a proviso for cesser. Now, however, by the operation of the Satisfied Terms Act, 1845, every term of years ceases and determines *ipso facto* as soon as its trusts are satisfied. See TERM.

Cessio bonorum, in Roman law, was where a debtor surrendered his property to his creditors in lieu of execution against his body. It did not release the debtor from his debts if he afterwards acquired property from which he could pay them without leaving himself in want. The principle of *cessio bonorum* has been adopted in many continental countries as a mode of giving relief to insolvent debtors, and was formerly a mode of effecting arrangements with creditors in English law. A *cessio bonorum* is now an act of bankruptcy (q.v.). See INSOLVENT.

Cession, in jurisprudence, signifies transfer or alienation; but it is not a term of English law in this sense. In ecclesiastical law, cession is where a person loses a benefice by accepting a new benefice or preferment, contrary to the Pluralities Acts, 1838 and 1850.

Territory is sometimes acquired by cession, as distinguished from conquest and occupation; and when so acquired, it is customary by some public instrument to define the new allegiance and also the laws under which the territory is henceforward to be governed. The old laws remain until altered by the new sovereign authority.

Cessor. Anciently this meant one who failed to perform a legal duty, and who thereby rendered himself liable to legal proceedings; see Old N. B. 136.

Cestui que trust. This means a person for whom another is trustee. The modern synonym is beneficiary.

Cestui que use. This, in the old law of real property, was a person to whose use (that is, for whose benefit) lands or other hereditaments were held by another person. The modern equivalent is the *cestui que trust*. See USE.

Cestui que use is a corruption of *cestui à que use* = "he to whose use." See CESTUI QUE VIE.

Cestui que vie. Where a person is entitled to an estate or interest in property during the life of another, the latter is called the *cestui que vie*.

Cestui que vie is a corruption of *cestui à que vie* = "he for whose life:" Compare the phrase "*que estate*" in the title PRESCRIPTION.

Cestui Que Vie Act, 1707. The popular title of the statute 6 Anne, c. 18, which was passed "for the more effectual discovery of the death of persons pretended to be alive to the prejudice of those who claim estates after their death." See PRODUCTION.

Chacea. Anciently this meant (1) some area for hunting, larger than a park and smaller than a forest; (2) the right to hunt within a certain area; (3) a drove-way (q.v.).

Chafewax; Chaffwax. An officer of the Court of Chancery, whose duty it was to chafe, or heat, and affix the wax used to seal writs, commissions and other instruments. It appears from the *Reports of the Committees of the House of Commons*, (1803), Vol. 13, p. 250, that in 1798 the office was held under patent by "a Major in the Militia" jointly with "a Captain on Half-Pay," who between them received about £460 a year in salary and fees, out of which they paid £20 a year to each of two clerks, who did the actual work. The office was abolished by the second of the Court of Chancery Acts, 1852, s. 23.

Chaff-cutting Machines. See the Chaff Cutting Machines (Accidents) Act, 1897, s. 23.

Chain. A measure of length consisting of twenty-two yards (Weights and Measures Act, 1878, s. 11).

Chaldron; Chaldern; Chalder. A customary measure formerly used for coals, and still used for coke. The London chaldron of coal weighs about thirty cwt., the Newcastle chaldron weighs about fifty-three cwt.

In law the chaldron is a measure of capacity, containing thirty-six bushels, and each bushel contains eight gallons (Weights and Measures Act, 1878, s. 15). Coal must now be sold by weight only, except where, by the written consent of the purchaser, it is sold by boatload or by waggons or tubs delivered from the colliery into the works of the purchaser (s. 20).

Challenge of Jurors. This is an objection to persons returned to be jurors in a civil or criminal proceeding. It is of two kinds—to the array, or to the polls.

A challenge to the array is an exception to the whole jury in respect of some partiality or default of the sheriff or other officer. It must specify the grounds on which it is made, and it must be in writing. Some causes of challenge to the array are called principal challenges, because if they are true they must be allowed, while others are called challenges for favour, because they show some grounds that imply a probability of favour or partiality, but are left to the discretion of the triors. A challenge to the array may be made in civil as well as in criminal cases.

Challenges to the polls (that is, to particular jurors) are made orally and are of five kinds: (1) A peremptory challenge is where the objecting party may challenge without showing any cause; this is only allowed in trials for treason or felony, *in favorem vitæ*, and is restricted to thirty-five jurors in the former generally (Treason Act, 1695, s. 2), and twenty in treason affecting the person of the sovereign (Treason Acts, 1800 and 1842), or in felony (Juries Act, 1825, s. 29). The following kinds of challenges are called by way of distinction "challenges for cause": and they may be made to any extent by any prisoner charged with any indictable offence; (2) *Propter honoris respectum*, as where a lord of Parliament is empanelled on a jury; (3) *propter defectum*, for some want or default in the individual juror, *e.g.*, persons not having qualification, idiots, and (Juries Act, 1870, s. 8), aliens neither domiciled nor naturalized; (4) *propter affectum*, for suspicion of partiality, which is either (a) a principal challenge, as where the juror is of kin to either party, or has an interest in the cause, etc.; or (b) a challenge to the favour, where there is merely a probability of bias; (5) *propter delictum*, for some crime or misdemeanour.

Challenges are tried and determined by triors appointed by the Court, or, in some cases, by the Court itself, or by persons who have been already sworn on the jury. See ELISORS.

The Crown, although it can challenge for cause, has no peremptory challenge; but it may order any person to "stand by," and need not show cause against any such person unless it appears, after the panel has been called over, that without him a full jury cannot be constituted.

Challenge to Fight. It is a misdemeanour, punishable with fine and imprisonment, to challenge any person to fight a duel, or to endeavour to provoke him to send a challenge.

Chamber-clerks. This is the legal title of the personal officers of the judges. In the case of the Lord Chief Justice and of the Master of the Rolls, these officers are a secretary, a principal clerk and a junior clerk, whose annual salaries respectively are £500, £400 and £200; each ordinary judge of the Court of Appeal has a principal clerk, whose salary is £400; and every other judge of the Supreme Court has a junior clerk, whose salary is £200. All such officers are appointed by, and hold office at the pleasure of, the judges to whom respectively they are attached (Judicature Act, 1873, s. 79).

Chamber-deacons; Chamberdekyns. The statute 1 Hen. 5, c. 8, enacted that "All Irishmen and Irish Clerks, Beggars called Chamber-deacons" should be banished out of the realm "except such as be graduates in the Schools [*i.e.*, the universities] and Serjeants and Apprentices of the Law and such as be Inheritors in England, and religious persons professed, and except the Merchants born in Ireland of good name and their Apprentices now living in England and them with whom the King will dispense."

The chamber-deacons seem to have been impecunious Irish scholars who frequented the universities and the Inns of Court.

Chamberlain of the City of London. From time immemorial this officer has been the treasurer of the City. Anciently he acted as banker, and so made a profit. Now he lodges all moneys with the Bank of England, and his only emolument as Chamberlain is a salary of £2,000 a year. The office is in the gift of the corporation. The Chamberlain keeps the roll of freemen and presents those distinguished persons on whom the freedom of the City is to be conferred. He is also treasurer of the Commissioners of Sewers (q.v.) of the City of London. He has a court, known as the Chamberlain's Court, in which, as well as in the police courts, disputes between masters and apprentices may be determined.

Chamberlain of the Exchequer. See TALLY.

Chamberlain, Lord. An officer of the royal household, who, amongst other functions, appoints the various royal tradesmen and the professional men who attend the household. He performs no political functions, but he is nominated by the Prime Minister for the time being and goes out of office with the ministry. Outside the royal household he has the control of theatres (q.v.) in London. He is quite distinct from the Lord Great Chamberlain.

Chamberlain, Lord Great. This is an hereditary office dating from the year 1133. It has descended through co-heiresses to the Earl of Ancaster, the Marquis of Lincolnshire and the Marquis of Cholmondely, who together have the right of appointing a deputy. In default of their agreeing, the King may appoint. The Marquis of Lincolnshire is at present the deputy.

The office is unpaid. The duties consist of certain ceremonial attendances at a coronation, of the care of the Houses of Parliament, and of introducing peers and bishops on their first taking their seats in the Lords.

Chambers. Attached to the various Divisions of the High Court are rooms called

chambers, in which the judges and their deputies, the masters, or, in the Probate, Divorce, and Admiralty Division, the registrars, sit to transact business which does not require to be done in Court, or can be more conveniently disposed of in chambers. The proceedings in chambers are private, only the parties or their solicitors and counsel being admitted. Judges may exercise in chambers all such jurisdiction as is authorised by rules of court (Judicature Act, 1873, s. 39; Judicature Act, 1875, s. 17). The rules bearing on the matter are Ord. 54, as regards chambers generally, and Ord. 55 as regards chambers in the Chancery Division. In the chambers of the King's Bench Division the masters, and in the chambers of the Probate, Divorce and Admiralty Division the registrars, have the same jurisdiction under Ord. 54, r. 12, as a judge has in chambers, except as regards the matters specified in that rule. In the chambers of the Chancery Division, the masters have power to hear and determine such matters as the judges may order (Ord. 55, r. 15), but trustee matters may not be dealt with by a master (*ib.*, r. 15A); any party is, however, entitled to demand that any question be decided by the judge personally. An appeal lies to the Court of Appeal against an order made in chambers of the Chancery Division, but only where the judge certifies that he does not desire to hear further argument; and in the absence of such certificate the proper course is to move the judge in Court to set the order aside. (See the Judicature Act, 1873, s. 50.) In the King's Bench Division, appeal from an order of a master in chambers is to a judge in chambers (Ord. 54, r. 21), and appeal from an order of a judge in chambers is to a Divisional Court (Ord. 54, rr. 23, 24), unless the order relates to practice and procedure, in which case appeal is to the Court of Appeal (Judicature Act, 1894, s. 1).

Chambers of the King; Regiæ cameræ. Inlets of the sea included within the territorial waters of the realm.

Champarty, or **Champerty.** This is a species of maintenance (q.v.) which consists in the purchasing of an interest in the thing in dispute, with the object of maintaining and taking part in the litigation. It is not champerty if the parties have a common interest; and a moral interest, as that of a parent in a child, suffices: nor is it champerty simply to mortgage the property in litigation with a view to raise the requisite funds.

Champerty is a common law misdemeanour, but prosecutions are rare.

Any bargain which "savours of champerty" is void, as being against the policy of the law. And so the Courts will not uphold any bargain under which A is to assist B in recovering property by an action and to receive a share of such property as may be recovered.

Champertors. An obsolete term meaning persons who are guilty of champerty (q.v.).

Champion. In trial by battle (q.v.), clerks, infants, children, and those over sixty years of age were from the first allowed to employ "champions," who fought in their stead; and subsequently the right to employ champions was extended to all litigants. Down to the enactment in 1275 of the Statute of Westminster I. (3 Edw. 1, c. 41), the champion was obliged to swear to his belief in the truth of the case set up by his principal, and, if it could be proved that he had sworn falsely, he was liable to lose a hand or a foot. See APPEAL OF FELONY; ASSIZE, GRAND.

Champion, The King's. An hereditary officer who holds by virtue of the tenure of the Manor of Scrivelsby, in Lincolnshire. Since 1377 the manor and the office have been held by the Dymoke family. The duty of the king's champion was to ride, in full armour, into Westminster Hall during the banquet which was formerly held there upon the occasion of a coronation and, through a herald, to challenge to single combat anyone who denied the king's title to the crown. The king then drank to the champion and sent him a gilt cup of wine. The champion drank the wine and retained the cup. This ceremony was performed at the coronation of Richard II. in 1377 and at all subsequent coronations, except those of the first two Georges, down to and including that of George IV., on which last-mentioned occasion it was performed by the eldest son of the champion, as deputy for the champion, who himself was in Holy orders.

Chancel is that part of a church which was originally set apart for the clergy to perform their religious offices; it answers to the choir in a cathedral or collegiate church. The rector or lay impropriator is bound to repair the chancel, and in return he is entitled as of common right to the chief seat in it, unless some other parishioner has it by prescription. Chancel is derived from *cancelli*, a lattice-work partition between it and the body of the church.

Chancellor. A chancellor is a judicial officer of a king, a bishop, or other high dignitary, or of a university.

The Lord High Chancellor of Great Britain

is "created by the mere delivery of the king's great seal into his custody, whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedency to every temporal lord. He is a privy councillor by his office, and, according to Lord Chancellor Ellesmere, prolocutor (or speaker) of the House of Lords by prescription. To him (under the crown) belongs the appointment of all justices of the peace throughout the kingdom. Being formerly usually an ecclesiastic (for none else were then capable of an office so conversant in writings), and presiding over the royal chapel, he became keeper of the king's conscience, visitor (in right of the king) of all hospitals and colleges of the king's foundation, and patron of all the king's livings under the value of twenty marks per annum in the king's books. He is the general guardian of all infants, idiots and lunatics, and has the general superintendence of all charitable uses in the kingdom." So Blackstone wrote a hundred and fifty years ago; and what he wrote need be varied only by saying that the duties mentioned in the last sentence are now entrusted to other judges. The Lord Chancellor was formerly the principal judge of the Court of Chancery, and is still president of the Court of Appeal and of the Chancery Division of the High Court, though he rarely sits except in the House of Lords. He acts as president of the House of Lords when it sits as a Court of Appeal. He is therefore, of course, a barrister—although in law there is nothing to prevent a layman from being Lord Chancellor, —and, as a rule, has previously either been Attorney- or Solicitor-General or held some judicial office. He is also a cabinet minister, and has charge in the House of Lords of all legal measures brought forward by the Government. He continues to be a member of the Court of Appeal after he vacates office, but he is under no obligation to sit in that Court (Judicature Act, 1891, s. 1). His salary is £10,000 a year and his retiring allowance is £5,000 a year. He vacates his office by mere delivery to the King of the Great Seal.

The Lord Chancellor nominates the judges of the High Court, except the Lord Chief Justice, who is nominated by the Prime Minister; and he appoints, and for inability or misbehaviour can remove, all County Court judges except those for districts within the Duchy of Lancaster (County Courts Act, 1888, ss. 8, 15). The Lord Chancellor cannot be a Roman Catholic (q.v.); but he need not be a member of the Church of England; and there is apparently nothing in the law—whatever there may be in constitutional practice—to prevent his being a Jew (q.v.).

The Chancellor of the Duchy and County Palatine of Lancaster is an official of the Crown as owner of the Duchy of Lancaster. He is really a politician who is appointed to the office in order that he may draw a salary of £2,000 a year, although he is nominally the judge of the Chancery Court of the County Palatine (see CHANCERY) and of the Duchy Court of Lancaster (q.v.). The judicial duties of the former Court are performed by the Vice-Chancellor, and the latter Court no longer sits, though it has never been actually abolished. The Chancellor appoints, and may remove for inability or misbehaviour, County Court judges for districts within the duchy (County Courts Act, 1888, ss. 8, 15); and within the duchy he appoints justices upon the recommendation of the lord lieutenant.

The chancellor of a bishop or diocese is a judicial officer who acts as the delegate of the bishop in hearing ecclesiastical causes, etc. The office generally includes in it two other offices—that of official principal (q.v.), and that of vicar-general (q.v.).

The Chancellor of the Exchequer (q.v.) was an officer originally appointed to act as a check on the Lord Treasurer, and was a judge of the Court of Exchequer sitting as a Court of Equity. The office, however, has long ceased to belong to the Exchequer in the modern sense of the word, and has become part of the Treasury. The judicial functions of the Chancellor of the Exchequer were formally abolished by the Judicature Acts, having long been practically obsolete. He now acts only as what in other countries would be called the Finance Minister. He is always a member of the Cabinet and is the minister responsible for the management of the financial affairs of the nation.

Chancellors of the Universities of Oxford and Cambridge are elected by the masters of arts of those universities. They are generally persons of rank or of distinction. Their functions are mainly honorary. Through his vice-chancellor the Chancellor of the University of Oxford still exercises judicial functions. See UNIVERSITY COURTS.

The word "chancellor" is derived from *cancellarius*, a clerk, said to be so called from his sitting *ad cancellos*, at the railing which separated the judges from the public. Compare BAR.

Chance-medley is where a man is assaulted in the course of a sudden brawl or quarrel,

and, after he has declined any further combat, kills his adversary in self-defence. It is a variety of excusable homicide. Coke paraphrases "chance-medley" as "homicide *per infortunium*"; but others say that the term is a corruption of *chaude meslée*, a hot fight; and Mr. Murray derives it from the Anglo-French "*chance medlée*, mixed or mingled chance or casualty." See HOMICIDE.

Chancery. Before the Judicature Act, 1873, came into operation on 1st November, 1875, the Chancery consisted of two Courts, and a number of offices. The court of equity, or the equity side of the Court of Chancery, which is generally meant by the expression "Court of Chancery," was the principal Court in which that part of the law of England known as "equity" (q.v.) was enforced. It consisted of four judges of first instance, namely, the Master of the Rolls (q.v.), and three vice-chancellors (q.v.), and a Court of Appeal, consisting of the Lord Chancellor and two Lords Justices (q.v.). Not only did the law administered in the Court of Chancery differ from that recognised in the Courts of Common Law, but it had also a different procedure. See SUIT; BILL OF COMPLAINT; PETITION; MATTER.

By the Judicature Acts the Court of Chancery was merged in the Supreme Court of Judicature, and its practice was altered (see ACTIONS AND MATTERS); but its judges of first instance now form a separate Division of the High Court, namely, the Chancery Division, which retains most of the business which was formerly within the exclusive jurisdiction of the Court of Chancery; and in many of its details the practice in Chancery proceedings remains the same as before. The Chancery Division also retains many of the various offices and officers attached to the Court of Chancery, while others have been abolished. See ACCOUNTS AND ENQUIRIES; CERTIFICATE; EQUITY; INQUIRY; MASTERS IN CHANCERY; RECORD AND WRIT CLERK.

The common law court and offices of the Chancery are much more ancient than the equity court, the jurisdiction of the latter having been originally an encroachment, and hence in old books the equitable jurisdiction of the Court is called its extraordinary jurisdiction. The most important part of the common law side of the Court of Chancery was its offices, especially the Petty Bag Office, the Hanaper Office and the Enrolment Office, the two former of which were concerned in issuing or sealing original writs, writs of error, parliamentary writs, letters patent, commissions to inquire as to lunatics, charities, &c., while in the Enrolment Office, as its name implies, deeds, etc., were enrolled or entered on record. The Court on this side of the Chancery had jurisdiction in matters relating to the business of the offices—*e.g.* in proceedings by *scire facias* to repeal letters patent, to enforce recognisances, in traverses of offices, and inquisitions, etc. See PETTY BAG OFFICE; SCIRE FACIAS; ENROLMENT; HANAPER.

By the Judicature Act, 1873, the Court of Chancery, as a common law court, and its offices, were transferred to the Supreme Court of Judicature. By the Judicature (Officers) Act, 1879, the Enrolment Office was consolidated (with others) into the Central Office of the Supreme Court, and the Petty Bag Office was abolished.

The Chancery Court of the County Palatine of Durham still exists. The "Chancellor of the County Palatine of Durham and Sadberghe," or Chancellor of Durham, is the judge. The Court has jurisdiction within the area of the ancient county palatine, which includes the modern county; see the Durham (County Palatine) Act, 1836. Its jurisdiction is concurrent with that of the High Court. Its procedure is now regulated by the Palatire Court of Durham Act, 1889, which (s. 11) gives a right of appeal to the Court of Appeal and thence to the House of Lords.

The Court of Chancery of the County Palatine of Lancaster is a Court having a local jurisdiction in equity. Its local jurisdiction is the same as that of the High Court (Chancery of Lancaster Act, 1890, s. 3). It consists of a vice-chancellor, with a registrar and other officers, forming a Court of first instance, from which an appeal formerly lay to the "Court of Appeal in Chancery of the County Palatine of Lancaster," consisting of the Chancellor of the Duchy and the Lords Justices of the Court of Appeal in Chancery; but this appellate jurisdiction was transferred to the Court of Appeal of the Supreme Court by the Judicature Acts, 1873 and 1875, and there is also an appeal to the House of Lords (Chancery of Lancaster Act, 1890, s. 4).

The Chancery Court of York is the ecclesiastical Court of Appeal for cases decided in the diocesan Courts within the province of York. The judge is called the official principal of the Court; he is also official principal of the Court of Arches (q.v.) (Public Worship Regulation Act, 1874, s. 7).

The Chancery was originally an office for the issue of writs, including the original writs by which all common law actions were com-

menced in ancient times (see OFFICINA JUSTITIAE). It was the business of the clerks in the Chancery to "hear and examine the petitions and complaints of suitors, and give them a remedy by the king's writ fitted to their case." The Chancellor being keeper of the king's seal also had the sealing of all charters, letters patent, and other public instruments; hence when any question arose on a charter, patent, commission, etc., proceedings were taken before the Chancellor; this was the origin of its common law jurisdiction. As to its equitable or extraordinary jurisdiction, see EQUITY; SUBPŒNA; COMMISSION OF REBELLION.

Chancery Master. See CHIEF CLERKS.

Chancery Orders. These were orders issued from time to time by the Lord Chancellor, the Lord Keeper, or the Commissioner of the Great Seal for the regulation of the procedure of the Court of Chancery. They were issued in a rudimentary form as early as the reign of Richard II., and in a more complete form during the chancellorship of Bacon and his various successors down to the coming into force of the Judicature Acts. They are now entirely replaced by the Rules of the Supreme Court, 1883.

Chandos Clause. The popular title of s. 20 of the Representation of the People Act [The Reform Bill], 1832. It gave the parliamentary franchise in counties (1) to persons possessed of premises of the annual value of not less than £10 held for the unexpired residues of terms which were originally not less than sixty years, or of premises of the annual value of not less than £50 held for the unexpired residues of terms which were originally not less than twenty years, and (2) to tenants paying a yearly rent of not less than £50.

The insertion of the section was moved by the Marquis of Chandos, M.P., eldest son of the Duke of Buckingham.

Channel Islands. These islands (of which the most important are Alderney, Guernsey, Jersey and Sark) form part of the British Islands (Interpretation Act, 1889). They have codes of laws peculiar to themselves, based upon the ancient laws of Normandy: and they are not bound by any British Act of Parliament unless expressly mentioned therein. The Crown claims the right to legislate by means of Orders in Council without consulting the local legislature. See APPROBATION DES LOIS; GRAND COUSTUMIER; PRÉCEPTE D'ASSIZE.

Chapels belonging to the Church of England are of the following kinds: A chapel of ease is one which is used only for the ease of the parishioners in prayers and preaching, while the sacraments and burial are received and performed at the mother church; the curate of such a chapel is generally removable at the pleasure of the parochial minister. A parochial chapel is one which has the privilege of administering the sacraments (especially baptism), and the office of burial. A free-chapel is one which is exempt from the jurisdiction of the bishop of the diocese, having been erected either by the Crown, or by the Crown's licence, with that exemption. Private chapels are such as noblemen and other persons have, at their own private charge, built in and near their own houses, for them and their families to perform religious duties in. The minister is called a chaplain, and is nominated by the owner of the chapel. There are also chapels built or endowed under Acts of Parliament, especially under the Church Building and Church Extension Acts; the principal of these are (i) district chapelries or chapels to which districts have been assigned by the Ecclesiastical Commissioners; such chapels have perpetual curates, with tithes, and exclusive cure of souls, and differ from churches in little more than name; (ii) consolidated chapelries, which differ from district chapelries chiefly in being formed out of portions of many parishes; (iii) chapels to which an endowment, without a district, has been granted by the Commissioners. See PROPRIETARY CHAPELS.

Chaplain. This, *simpliciter*, means a clergyman who conducts divine service in a chapel. There are, however, many kinds of chaplains, such as the chaplains-in-ordinary to the King, who perform divine service in the chapel of St. James's Palace; and chaplains, such as Army and Navy chaplains, prison chaplains, and lunatic asylum chaplains, whose position is dealt with by various statutes.

Formerly various private persons were authorised by various statutes (such as the 22 Hen. 8, c. 13; the 25 Hen. 8, c. 16, and the 33 Hen. 8, c. 28) to retain in their service chaplains in numbers varying from six for a duke down to one for the Attorney-General. Such chaplains enjoyed various privileges regarding the holding of plural livings. See ST. JOHN'S, ETC.

Chapter. See DEAN AND CHAPTER.

Character. Evidence as to the character of a party to a judicial proceeding is not, in general, admissible, unless the nature of the proceeding is such as to put his character in issue. In an action for seduction, or in a

prosecution for rape or attempted rape, evidence may be given as to the character of the woman for chastity. A prisoner may call witnesses to speak to his character in reference to the charge against him, and the prosecutor may then adduce evidence of his general bad character, but he cannot go into particular instances of misconduct, except (1) in the case of a prisoner charged with felony not punishable with death, in which case, if the prisoner calls witnesses as to character, the prosecutor may, in answer thereto, give evidence of his conviction for a previous felony (Previous Conviction Act, 1836), and except (2) in the case of a prisoner charged with any offence under the Larceny Act, 1861, in which case, if the prisoner calls evidence of good character, the prosecutor may prove any previous conviction, whether summarily or on indictment (Larceny Act, 1861, s. 116); and except also (3) in the case of any prosecution under the Coinage Offences Act, 1861, or earlier Acts as to the coinage, in which case, if the prisoner calls evidence of good character, the prosecution may prove any previous conviction under any such Act (Coinage Offences Act, 1861, s. 37).

Evidence is also admissible to show that a witness is unworthy of credit, such evidence being that of persons who swear that from their knowledge of the witness they believe him to be unworthy of credit on his oath. If a witness is asked whether he has been convicted of felony or misdemeanor, and denies or refuses to answer, the opposite party may prove the conviction (Criminal Procedure Act, 1865, s. 6). In order to impeach the character of a witness under cross-examination he may be asked and required to answer—unless he can claim privilege—any question which affects his veracity, accuracy or credibility with regard to the matter of fact under investigation, no matter how damaging to his character his answer may be. When a prisoner gives evidence under the Criminal Evidence Act, 1898, he is not to be asked any question tending to show that he is of bad character unless he has personally or by his advocate asked questions of the witnesses for the prosecution tending to show that he is of good character, or has himself given evidence that he is of good character, or unless he has attacked the character of the prosecutor or the witnesses for the prosecution or unless he has given evidence against any other person charged with the same offence (s. 1).

Charge. A charge, in its general sense, is an obligation or liability. Thus we speak of a district being chargeable to maintain its own highways, and of a pauper being chargeable to the parish.

More frequently, however, charge is applied to property, and signifies that it is security for the payment of a debt or performance of an obligation. It is a general term, and therefore includes mortgages, liens, writs of execution, etc., but is also applied in a restricted sense to cases where the security has no special name, and where there is not necessarily a personal debt. Thus, if the owner of land agrees that it shall be security for a debt or obligation by himself or another person, that will charge the land; the principal effect of such a charge is to entitle the grantee to take proceedings to obtain a sale of the property charged. See HYPOTHECATION.

Land charges, that is to say, moneys expended upon land under statutory authority and charged thereon, are void against a purchaser for value of the lands unless such charges are registered in the register of land charges which is kept at the Land Registry (Land Charges Registration and Searches Act, 1888; Land Charges Act, 1900).

Where a person by his will charges his real estate with the payment of any debts or legacies, the executors or trustees may raise such debts or legacies by sale or mortgage of the lands. If he has devised them for his own benefit subject to the charge, then in the case of copyholds (Land Transfer Act, 1897, s. 1 (4)), or where the testator died before 1st January, 1898, of other real estate (*ib.*, s. 25), the devisee (Law of Property Amendment Act, 1859, s. 14) (if he accepts the devise), and in the case of real estate other than copyholds, where the testator died after 31st December, 1897, the personal representatives (*ib.*, ss. 1, 25) must satisfy the debts or legacies, and for this purpose the personal representative may sell, and the devisee sell or mortgage, the land.

"Charge" is also applied to equitable assignments by way of security. (See ASSIGNMENT; ASSIGNMENT OF CHOSES IN ACTION.) Thus, if A, being entitled to a payment *in futuro* of £500 from B, and being indebted to C for £200, gives C an order on B to pay him £200 out of the £500, this is an equitable assignment, and would be called a "charge" on the £500 in B's hands, because its operation is to secure the payment of C's debt.

Under the Solicitors Act, 1860, s. 28, where a solicitor is employed to prosecute or defend any proceeding in a court, the court may make a declaration that the solicitor is entitled to a charge upon the property recovered or

preserved by the proceeding, and the charge is effectual against all persons, except *bonâ fide* purchasers of the property for value without notice; but if the declaration affects land it will apparently be void against such a purchaser unless it is registered in the Register of Writs and Orders (q.v.).

Under the Land Transfer Act, 1875, s. 22, the registered proprietor of freehold or leasehold land may charge it with the payment of money, with or without a power of sale, by executing an instrument of charge in the statutory form, and by having the charge entered on the register. It has most of the incidents of an ordinary mortgage (ss. 23-27). The proprietor of the charge is entitled to a certificate of charge (s. 22).

Under the Agricultural Holdings Act, 1908, s. 15, when a landlord pays to his tenant compensation in respect of improvements effected by the latter on the land, he may obtain from the Ministry of Agriculture and Fisheries (q.v.) a charge of the amount on the land, the effect of which is to make the land liable for the repayment of the amount by instalments to the landlord, his executors, administrators and assigns, so that where he is merely a limited owner (*e.g.* a tenant for life) the amount will be repaid to him or his personal representatives if his estate comes to an end before the time when the improvement in respect of which the compensation was paid is taken to be exhausted. This time varies with the nature of the improvement.

In an action for an account in the Chancery Division, a person was formerly said to be charged with sums which he admitted, or was proved to have received. When he brought in an account showing receipts and payments by him, he was said to charge himself with the receipts, and to discharge himself by the payments. See CHARGE AND DISCHARGE.

In criminal law, a charge is an accusation, made by a summons, warrant, information, indictment or the like. (See those titles.)

Under the old Chancery practice, before 1875, charges were allegations in a bill of complaint intended either to substantiate the general statement of the plaintiff's case, or to avoid a defence which he anticipated that the defendant would set up. See BILL OF COMPLAINT.

The term "charge" is also applied to the instruction given by a judge to a grand jury before they consider the bills sent up to them, to the summing up or address which the judge delivers to a petty jury before they retire to consider their verdict and to the address which a bishop or archdeacon delivers to the clergy on a visitation. As to rentcharges, see RENT; and as to tithe rentcharge, see TITHE.

Charge and Discharge. Before the Judicature Acts came into operation on 1st November, 1875, this was the form in which an account was taken before a Master in Chancery.

Chargé d'Affaires is a diplomatic agent, differing from an ambassador or minister in being accredited to the minister, not the sovereign, of the foreign state where he resides, and in representing a minister and not the sovereign of his own state.

Charging Order. Under the Judgments Act, 1838, ss. 14-16, and the Judgments Act, 1840, when judgment has been recovered in an action, a judge at chambers may make an order that any government stock, funds or annuities, or any stock or shares in a public company in England, standing in the name of the judgment debtor in his own right, or in the name of any person as trustee for him, shall stand charged with the payment of the judgment debt. The effect is to prevent the transfer of the stock, and to give the judgment creditor all the remedies which he would have been entitled to if the charge had been made in his favour by the judgment debtor, but he cannot enforce it until six months from the date of the order.

As to so-called charging orders under the Solicitors Act, 1860, see CHARGE.

See DISTRINGAS, NOTICE IN LIEU OF; STOP ORDER.

Charitable Trusts Acts, 1853 to 1914. These Acts were passed to constitute a board of commissioners called the Charity Commissioners, with powers for inquiring into the nature, objects, condition and management of charities, and for giving advice and directions, and making orders for the administration of charity property, and for authorising leases, sales, and exchanges of charity lands. A mode of applying to the Chancery Division in matters relating to charities, by petition or summons, in a summary way, is also provided. The Acts do not apply to unendowed charities. See CHARITY; SCHEME; ENDOWED SCHOOLS; OFFICIAL TRUSTEES OF CHARITABLE FUNDS AND CHARITY LANDS; WAR CHARITIES.

"Charitable Uses." This expression is defined by s. 13 (2) of the Charitable Uses and Mortmain Act, 1888.

Charitable Uses Act, 1735, is the statute 9 Geo. 2, c. 36, which prohibited gifts to charities of land, or moneys arising from or to be laid out in land, unless made in accordance

with the provisions of the Act. It is commonly, but inaccurately, known as the Mortmain Act. Except as regards s. 5, which enacts (by reference to the repealed s. 4) that colleges at Oxford or Cambridge, and the colleges of Eton, Winchester and Westminster, shall not hold more advowsons than are equal to one moiety of their fellows or, where there are no fellows, of their foundation scholars, *plus* any advowsons annexed to the headships of such colleges, the whole Act was repealed by the Mortmain and Charitable Uses Act, 1888, s. 13, as to which see MORTMAIN.

Charity. When a person gives money or property for the benefit of the public, or a section of the public, this constitutes a charitable gift, and the donor is called the founder of the charity. In practice, however, the term is usually applied to institutions of a permanent character, such as hospitals, schools, etc. The object must be *public*, and therefore gifts for the erection or repair of private tombs or monuments (so-called private charities) are not charities in the proper sense of the word. Instances of proper charities (sometimes called public charities) are gifts for the relief of aged, poor and sick persons, for the relief of the donor's poor relations, for education, for the repair of bridges, towards payment of the national debt, etc. When a charity has to be administered with reference to the tenets of a particular religion (*e.g.* where its purpose is education in those tenets, or where its objects must be persons holding those tenets), the charity is said to be ecclesiastical, as opposed to a lay or eleemosynary charity, which is not restricted with reference to any particular religion. An endowed charity is one which possesses property from which it derives income, and which was originally given to it for the purpose of being kept as a source of income; a charity, therefore, which is supported wholly or partially by voluntary subscriptions is (wholly or partially) an unendowed charity; and neither money arising from voluntary subscriptions, nor property given to a charity in such a way that it might legally be applied as income, is converted into an endowment merely by being set apart or invested for the purpose of being applied to some defined and specific object connected with the charity. See CHARITABLE TRUSTS ACTS; FABRIC LANDS; MORTMAIN; INFORMATION; SCHEME; CY-PRÈS; VISITOR.

Charity Commissioners. See CHARITABLE TRUSTS ACTS.

Charta de Foresta. A charter of the forest, by which many forests unlawfully made, or at least many precincts added by unlawful encroachments, were disafforested. It was confirmed by the Statute of Marlborough (52 Hen. 3, c. 5), passed in 1267.

Charta de una parte. Literally a one-sided charter. It means a deed poll (q.v.), which is in fact a unilateral instrument.

Chartæ libertatum. The charters of liberties. They were the Charta de Foresta and Magna Charta.

Charter formerly meant any deed relating to hereditaments, especially deeds of feoffment, but it is now always used in the sense of a royal charter, which is a grant by the Crown, in the form of letters patent under the Great Seal, to persons therein designated, of *jura regalia* (q.v.) or other franchises, liberties, property, rights, powers, privileges or immunities. At the present day the most usual instances of charters are those creating universities and other corporations. See LETTERS PATENT; CORPORATION; SURRENDER.

Chartered Companies. See COMPANIES, CHARTERED.

Charterer. This, of course, ordinarily means one who charters a ship. Anciently in Cheshire it seems to have meant a holder of charterland (q.v.).

Charterland. Bocland (q.v.).

Charter-party is a written agreement by which a shipowner lets an entire ship, or a part of it, to a merchant for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the merchant undertakes to pay as freight for their carriage. The principal stipulations in an ordinary charter-party refer to the places of loading and delivery, the mode and time of paying the freight, the number of laying days (that is, the time allowed the freighter for loading and unloading), and the rate of demurrage (q.v.).

The agreement is construed liberally, upon the maxim *ut res magis valeat quam pereat*: but if the words are clear the Court will not reject or explain away a stipulation, however harsh or oppressive in the event. Also, usage is admissible to explain mercantile terms and phrases, but not to contradict or vary the written instrument itself. However, a custom not repugnant to anything in the writing may be annexed to it. And with reference to what mistakes shall avoid the contract and what stipulations amount to conditions precedent, and generally as to all other matters of construction, the rules applicable to other contracts apply to charter-parties also.

The agreement may be dissolved—(1.) By

consent before breach without any new consideration, and after breach upon terms. If the original agreement is by deed, the agreement for dissolution must be by deed also; on the other hand, if the original agreement is in writing not under seal, the agreement for dissolution may be either in like writing or by word of mouth, and that notwithstanding the original contract may require by statute to be in writing. (2.) By an unreasonable delay in the commencement of the voyage, at least when a particular day is fixed for the sailing, and time is (as it usually is) of the essence of the contract; or (3.) By act of law, rendering the performance impossible, without any fault of the parties; *e.g.*, by the outbreak of a war or a general interdiction of commence, but not by a mere embargo, nor even by a blockade, although duly notified.

A charter-party must be stamped with a sixpenny impressed stamp (Stamp Act, 1891, ss. 1, 2, Sch. I). If first executed outside the United Kingdom, it may be stamped without penalty if stamped within ten days of its receipt in the United Kingdom and before being executed by any person therein (s. 50).

After execution in the United Kingdom, it may within seven days of the first execution thereof, be stamped on a penalty of four shillings and sixpence, and after seven days but within one month after the first execution, it may be stamped on a penalty of ten pounds, but it cannot be stamped afterwards (s. 51). It cannot be used in legal proceedings unless it is stamped. Under s. 15 (3) (*b*) of the Act, the Commissioners of Inland Revenue may mitigate or remit the penalties mentioned above.

Carta partita means an instrument or deed cut in two, and apparently the shipowner's copy and the merchant's copy were originally written on the same sheet of paper or parchment, which was then cut in two, in the same manner as an indenture (q.v.).

Chartis reddendis, De. A writ which anciently lay against one who had charters of feoffment entrusted to his keeping and who refused to deliver them.

Chase is a district of land privileged for wild beasts of chase, with the exclusive right of hunting therein. It resembles a forest (q.v.), except that it has no peculiar laws or courts. A chase belonging to the Crown is called a chase royal; a chase in the hands of a subject (whether by royal grant or by prescription) is sometimes called a free (or frank) chase; it is a franchise (q v.), and may belong either to the owner of the land over which the right of chase exists, or to another person.

Chastisement. At common law parents and teachers can inflict reasonable corporal punishment upon children and young persons; and the right is expressly saved by s. 37 of the Children Act, 1908. At common law also, a master may inflict reasonable corporal punishment upon an apprentice for misconduct; but this right is now rarely exercised. The master of a ship has a like right with regard to seamen, and it has never been abrogated by statute; but, in view of the statutory provisions which now exist for the punishment of misconduct by seamen, the exercise of the right would appear to be unjustifiable except in abnormal circumstances. A husband has no right whatever to inflict corporal punishment on his wife, and it may be said generally that, except as stated above, no corporal punishment can be legally inflicted unless it is expressly authorised by statute. See WHIPPING.

Chastity. See SLANDER.

Chattels is a term used to denote any kind of property which, having regard either to the subject-matter or the quantity of interest therein, is not freehold. Any estate in lands and tenements which does not amount to freehold is consequently a chattel, but inasmuch as it concerns or "savours" of the realty, it is called a chattel real, to distinguish it from things which have no concern with land, viz. mere moveables and rights connected with them, all of which are called chattels personal. Chattels real include estates for years, at will, by sufferance, wardships, and various interests of uncertain duration. See ESTATE; INTEREST.

The term "chattels personal" is generally applied to tangible things, such as furniture, jewels, animals and the like Choses in action (q.v.) and incorporeal personal property, such as copyrights, patent rights, and the like, are not generally included in the term "chattels." See CATALLA; PERSONAL PROPERTY.

Chaud-medley. See CHANCE-MEDLEY.

Chauntry was a church or chapel endowed with lands or other yearly revenues for the maintenance of one or more priests, to sing mass daily for the souls of the donors and such others as they appointed. Chauntries were abolished by the statutes 37 Hen. 8, c. 4, and 1 Edw. 6, c. 14, and their lands given to the Crown.

Cheap Trains. Under the Cheap Trains Act, 1883, s. 2, fares at a rate not exceeding one penny per mile are exempted from railway passenger duty, and the duty is reduced in the case of urban traffic generally. S. 3 empowers the Board of Trade to compel

railway companies to provide proper third-class accommodation and to provide proper trains to carry workmen to and from their work between 6 p.m. and 8 a.m., at fares which the Board consider reasonable.

Cheat. This, in the criminal law, is a generic term for the act of fraudulently obtaining the property of another by any deceitful practice not amounting to felony, but of such a nature that it directly affects or may directly affect the public at large. Thus, selling by a false weight or measure, even to a single person, is a cheat, while selling short measure or weight (no false weights or measures being used) is not, because it only affects the person actually defrauded. So, maiming oneself in order to have a pretext for begging is a cheat.

Every cheat is a misdemeanour at common law. Most common law cheats are now misdemeanours by statute, and as a rule, a cheat is now charged only in such cases as have not been the subject of enactment.

Checkweigher. The persons employed in a coal mine who are paid according to the weight of the coal cut by them may, at their own cost, appoint a "check-weigher" to watch the weighing in their interest (Coal Mines Regulation Act, 1887, s. 13), and also a deputy check-weigher (Coal Mines (Weighing of Minerals) Act, 1905). Interference by the mine-owner with such appointment, or with the exercise of the necessary functions of these weighers, is an offence punishable summarily (Coal Mines (Check-Weighers) Act, 1894).

Cheese. "In this Act, unless the context otherwise requires . . . the expression 'cheese' means the substance usually known as cheese, containing no fat derived otherwise than from milk . . . " (Sale of Food and Drugs Act, 1899, s. 25). Compare MARGARINE-CHEESE.

Chelsea Hospital. This institution was founded towards the end of the seventeenth century for the relief of invalid soldiers. The original intention was that the men relieved should reside in the hospital, but almost from the first a system of out-pension was adopted, and under this system pensions are paid to men in all parts of the Empire, while but comparatively few are maintained in the hospital. The hospital has since its foundation been the subject of many Acts of Parliament, of which those still in force are enumerated in the *Chronological Table and Index of the Statutes*.

The functions of the Commissioners who administer the affairs of the hospital are, since 1916, in a large measure, vested in the Minister of Pensions (q.v.).

Chemical Manures. The manufacture of chemical manures is at least likely to cause a nuisance. It is therefore subject to various restrictions, as to which see ALKALI WORKS and OFFENSIVE TRADES.

Chemists and Druggists. As distinguished from an apothecary (q.v.), a chemist is one who sells drugs and medicines but does not prescribe them. He, in fact, sells what he is asked for, not what he thinks the purchaser ought to use.

The Acts regulating the business of chemists are: the Pharmacy Act, 1852; the Pharmacy Act, 1868; the Pharmacy Act, 1869; and the Poisons and Pharmacy Act, 1908.

Anyone may lawfully sell drugs, other than the poisons which are within the Acts, provided that he does not, unless authorised under the Acts, use the title of pharmaceutical chemist, the title of pharmaceutist, or any name, title or sign implying that the person using, assuming or exhibiting it is either registered under the Pharmacy Act, 1852, or a member of the Pharmaceutical Society (Pharmacy Act, 1852, s. 12), or use the title of chemist and druggist, the title of chemist, the title of druggist, the title of pharmacist, the title of dispensing chemist, or the title of dispensing druggist (Pharmacy Act, 1868, ss. 1, 15). Under these sections he may not use any of those titles, or sell poisons which are within the Acts, unless he is a person who, under the Acts, is entitled to use some one or other of those titles. The prohibition as to the sale of poisons which is contained in those sections does not, however, apply to any legally qualified medical practitioner, who, in order to obtain his diploma, has passed an examination in pharmacy (Pharmacy Act, 1869, s. 1), or to any legally qualified apothecary, or to dealing in patent medicines, or to wholesale dealing in poisons (Pharmacy Act, 1868, s. 16), or to the carrying on, by the personal representatives of a deceased qualified person, the business of such person by means of a person who is duly qualified (*ib.*, Poisons and Pharmacy Act, 1908, s. 3 (2)), or to poisons dispensed by any legally qualified veterinary surgeon for animals under his care (*ib.*, Pharmacy Act, 1869, s. 1), or to poisonous substances sold under licence from the local authority for agricultural and horticultural purposes (Poisons and Pharmacy Act, 1908, s. 2).

The poisons which are within the Acts are those specified in the schedule to the Poisons

and Pharmacy Act, 1908, but the Pharmaceutical Society may, with the approval of the Privy Council, from time to time resolve that the schedule be amended by removing poisons from or adding poisons to it (Pharmacy Act, 1868, s. 2; Poisons and Pharmacy Act, 1908, s. 1).

The Pharmaceutical Society of Great Britain —in this article called the Pharmaceutical Society—which is the body entrusted with the examination, registration and control of chemists and druggists and of pharmaceutical chemists, was incorporated in 1843 by a royal charter, since modified and confirmed by the Pharmacy Act, 1852, s. 1. It was granted a supplementary charter in 1901. It consists of members and student-associates (Pharmacy Acts Amendment Act, 1898, s. 2). All persons registered as chemists and druggists, under the Pharmacy Act, 1868, s. 5, are eligible as members (*ib.*).

Omitting, as practically extinct, certain classes of persons who before 1868 had possessed various obsolete qualifications, a "chemist and druggist" is a student-associate who has been examined and certified to be qualified, and who thereupon has been registered under the Pharmacy Act, 1868, s. 10, as a "chemist and druggist." Under the by-laws of the Pharmaceutical Society, s. 7 (13), made pursuant to the Pharmacy Act, 1852, s. 1, a "pharmaceutical chemist" is, and since 1868 has been, a person who is registered as a "chemist and druggist," and who has passed the prescribed examination for registration as a "pharmaceutical chemist." The precise business of a pharmaceutical chemist, as distinguished from that of a chemist and druggist, is nowhere defined by statute; and there is nothing to prevent a duly qualified chemist and druggist from dispensing prescriptions. "Pharmaceutical chemists" and "chemists and druggists" are the only two classes known to the Acts. The titles, other than "pharmaceutical chemist," mentioned in s. 12 of the Pharmacy Act, 1852, are merely popular variants of that title; and the titles, other than "chemist and druggist," mentioned in ss. 1 and 15 of the Pharmacy Act, 1868, are also mere popular variants of the title "chemist and druggist."

The Privy Council may direct that there be erased from the register the name of any pharmaceutical chemist or chemist and druggist, who has been convicted of any offence which in the opinion of the Council makes him unfit to be on the register (Pharmacy Act, 1868, s. 26).

The Pharmacy Act, 1868, s. 17, provides a penalty, recoverable summarily, of £5 for a first, and of £10 for any subsequent breach of the provisions of that Act and the earlier Acts as to the sale of poisons; and under s. 15 of the same Act a penalty of £5, recoverable in the County Court, is provided for breaches of other provisions of the same Acts, all of which provisions, it is to be noted, cannot be set out in a work such as this. See POISONS, SALE OF.

Cheque. A cheque is a bill of exchange (q.v.) drawn on a banker, payable on demand (Bills of Exchange Act, 1882, s. 73). The person making the cheque is called the drawer, and the person to whom it is payable is called the payee.

Except as otherwise provided in ss. 73-82 of the Bills of Exchange Act, 1882, the provisions of that Act regarding a bill of exchange, payable on demand, apply to a cheque (s. 73). Thus, it is a negotiable instrument, unless its negotiability is qualified or restrained; it may be made payable to order or bearer; and the liability of the drawer resembles that of the drawer of a bill. But there are several enactments applying to cheques and not to bills. Thus (s. 74), the drawer of a cheque is not discharged by the holder's failure to present in due time, unless he has sustained actual prejudice from the delay, in which case he is discharged to the extent of such damage; again (Stamp Act, 1853, s. 17), a banker who pays a cheque to order on a forged indorsement of the payee's name is not liable to his customer for the amount; and (Bills of Exchange Act, 1882, ss. 76-82), the negotiability of a cheque may be restrained by means not applicable to bills of exchange.

The negotiability of a cheque may be restrained by crossing it. When the cheque bears across its face the words "and Company," or any abbreviation thereof, between two parallel transverse lines, or bears across its face two parallel transverse lines, either with or without the words "not negotiable," it is said to be crossed generally, and when it bears across its face the name of a banker, either with or without the words "not negotiable," it is said to be crossed specially, and to be crossed to that banker (s. 76). The holder of a cheque which is uncrossed may cross it either generally or specially; if it is crossed generally he may cross it specially; and whether it is crossed generally or specially he may add the words "not negotiable" (s. 77). When a cheque is crossed generally, the banker on whom it is drawn must not pay it across the counter, but can only pay it to another banker

(s. 79 (2)); in other words, the holder of such a cheque cannot obtain payment of it unless he, or some one who is willing to lodge the cheque for him, has an account with some banker. When a cheque is crossed specially, the banker on whom it is drawn can pay it only to the banker to whom it is crossed (*ib.*); in other words, the holder of that cheque cannot obtain payment of it unless he, or some one who is willing to lodge the cheque for him, has an account with the banker to whom it is crossed. When a cheque bears the words "not negotiable," in addition to the crossing, the holder of it cannot give a transferee a better title than he has himself (s. 81).

Chester. Chester was a county palatine (q.v.), from the time of William the Conqueror, and had palatine courts down to 1830. The Law Terms Act, 1830, by s. 13 extended to the county of Chester and to Wales the jurisdiction of the courts at Westminster, abolished by s. 14 the Court of Session and the Court of Exchequer of the County Palatine of Chester, as well as the Court of Great Session in Wales, transferred the jurisdiction of those courts to the Court of Chancery in London and the Court of Exchequer at Westminster respectively, and enacted by s. 19 that assizes should be held in Cheshire and Wales as in the rest of England. This left Lancaster and Durham the only parts of the country with palatine courts. See WALES; PLEAS OF THE SWORD; PRINCE OF WALES.

Chester (Herald). See HERALDS.

Chevage; Chevagium. An annual poll-tax payable anciently by certain persons to a superior; thus, Jews paid it to the king, and villeins to their lord.

Chief Baron of the Exchequer. The judge who presided in the Court of Exchequer, which under the Judicature Act, 1873, ss. 3, 16, became part of the Supreme Court and under s. 34 was consolidated with the King's Bench Division. Upon the death in 1880 of Chief Baron Kelly, the office was abolished. The powers formerly possessed by the Chief Baron of the Exchequer are now exercised by the Lord Chief Justice (Judicature Act, 1881, s. 25).

Chief Clerks. Eight of these officials were appointed in 1852. (See MASTERS IN CHANCERY.) Under the Court of Chancery Officers Act, 1867, s. 1, each of the four judges to whom chief clerks were attached was given an additional chief clerk. The Judicature Act, 1873, s. 77, transferred the chief clerks to the Supreme Court. In 1897 the title of Master of the Supreme Court was conferred on them by order of the Lord Chancellor. But they have no independent jurisdiction such as the old Masters in Chancery had, or such as the Masters of the King's Bench Division still have. The duties of these Chancery Masters—as they are for convenience sometimes called—are regulated by R.S.C., Ord. 55; rr. 15-18; see also rr. 65, 71 of that Order.

Before the reform effected early in the nineteenth century, there was the Chief Clerk or Prothonotary of the King's Bench. The office was held in 1798 by Lord Stormont and one John Way, under grant from Lord Mansfield to them, and the survivor of them, for life. The actual work was done by clerks; and, after they were paid, there was £1,200 a year for Way and something over £4,000 a year for Lord Stormont. See *Common Committees Reports*, 1803, Vol. 13, p. 233.

Chief Justice in Eyre of the Forest. See FOREST.

Chief Justice of the Common Pleas. The judge who presided before the Judicature Act, 1875, in the Court of Common Pleas, and subsequently in the Common Pleas Division. Lord Chief Justice Coleridge was the last holder of the office. Upon his being appointed Lord Chief Justice of England in 1881, the Common Pleas Division was merged in the King's Bench Division. The Lord Chief Justice of England now exercises the powers formerly possessed by the Lord Chief Justice of the Common Pleas (Judicature Act, 1881, s. 25).

Chief Justice of England. The full title of this high judicial officer is the Lord Chief Justice of England. He presides in the King's Bench Division; and he represents not merely the Chief Justice of the ancient Court of King's Bench, but also the Chief Baron of the Exchequer (q.v.) and the Chief Justice of the Common Pleas (q.v.), the jurisdiction of all three of those courts being now exercised by the King's Bench Division (q.v.).

Chief Pledge. The statute 20 Hen. 6, c. 8, empowered the "conestable, tythingman, or chief plegge de chescun ville" to aid the owner of goods in resisting illegal purveyance. The "chief pledge" was the same as the head-borough (q.v.).

Chief Registrar in Bankruptcy. See CLERK OF ENROLMENTS.

Chief-rent; Quit-rent. A quit-rent is a small fixed annual rent payable by the copyholders or freeholders of a manor. When paid by a freeholder it is sometimes called a chief-rent.

The Conveyancing Act, 1881, s. 45, and the

Copyhold Act, 1894, provide for the redemption of quit-rents.

Where a quit-rent has, without acknowledgment being given, remained unpaid for twelve years, the right to recover the rent is barred and the rent is extinguished under the Statutes of Limitation. See ALBA FIRMA; BLACKMAIL.

Chief, Tenants in. See CAPITE.

Child; Children. As a technical term, in legal instruments, "child" is always construed to mean a legitimate, as opposed to an illegitimate, child (see BASTARD). Hence, where a testator, having married a woman by whom he had had illegitimate children, but no legitimate children, left his property to "my children by her," it was held that the illegitimate children could not take. If the testator had used words sufficient to identify the children as *personæ designatæ*, that is to say, as being the persons referred to, the gift would have been effectual in their favour.

For the purposes of the Children Act, 1908, the expression "child" is defined by s. 131 of that Act as a person under fourteen years of age. See also BROTHEL; CARNAL KNOWLEDGE; CRUELTY TO CHILDREN; DRUNKENNESS; INDUSTRIAL SCHOOL; FACTORIES; PROSTITUTE.

Child-bearing. See AGE.

Child Stealing. See ABDUCTION.

Child-wyte. A fine or composition payable to the lord of a woman who had been seduced and got with child. See FORNICATION.

Chiltern Hundreds, Stewardship of. The Chiltern Hundreds are the hundreds of Stoke, Desborough, and Burnham in Bucks. The Stewards of the Chiltern Hundreds anciently had functions to perform and received some emolument. But the office has long been a sinecure and altogether unpaid. It is in the gift of the Crown. Now the Succession to the Crown Act, 1707 (6 Anne, c. 41), s. 25, provides that "if any person being chosen a member of the House of Commons shall accept of any office of profit from the Crown during such time as he shall continue a member, his election shall be . . . void"; (though, if the office be one which a member can hold, he may be re-elected), and, as the warrant appointing a Steward of the Chiltern Hundreds grants "all wages, fees, allowances," it is held, by what is about the last surviving legal fiction, that a member accepting the stewardship has accepted an "office of profit from the Crown." Acceptance of the Stewardship of the Chiltern Hundreds, or of some analogous office, such as the Stewardship of the Manor of Northstead, or Hempholme in Yorkshire, or of the Manor of East Hendred, has since about 1750 been the recognised means of resigning membership of the House of Commons. Up to then there had been no means of resignation; but now this means is always available, except in the rare case of a member with regard to whom it is clear that he ought to be expelled; in which case the Chancellor of the Exchequer will refuse an application for the Chiltern Hundreds. A steward holds office until the next steward is appointed. See OFFICE OF PROFIT.

Chimin. This is a corruption of the French *chemin*. Anciently, it meant either a public highway or a right possessed by one man to pass through the land of another.

Chiminage. A toll anciently levied on those passing through a royal forest. It was also known as *pedagium*.

Chimney-money. Also known as hearth-money. It was a duty, at the rate of two shillings a year for "every firehearth and stove," imposed by the statute 14 Car. 2, c. 10, s. 1, on all houses except (see ss. 16, 17) those of the very poor. That statute was repealed by the statute 1 Will. & Mary, sess. 1, c. 10, s. 1.

Chimneys. The construction of chimneys is regulated, in London by the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), ss. 64-67, and outside London by the Chimney Sweepers Act, 1840, s. 6, and the by-laws made under the Public Health Act, 1875, s. 157 (2).

The emission from chimneys of black smoke in such quantity as to be a nuisance is dealt with, as regards London, by the Public Health (London) Act, 1891, s. 24, and as regards the rest of England by the Public Health Act, 1875, s. 91 (7).

Setting fire to chimneys, outside London, in order to clear out the soot, is punishable with a penalty of not more than £5, recoverable summarily (Town Police Clauses Act, 1847, s. 31; Public Health Act, 1875, s. 171).

The occupier of a house in which a chimney catches fire is liable in London, whether he has or has not been negligent, to a penalty of not more than twenty shillings (Metropolitan Fire Brigade Act, 1867, s. 23), and outside London he is liable to a penalty of not more than ten shillings, unless he can show that neither he nor any servant of his has been guilty of negligence (Town Police Clauses Act, 1847, s. 31; Public Health Act, 1875, s. 171).

Chimney-sweepers. Any chimney-sweeper employing in connection with his business any child under ten elsewhere than at his house or place of business (Chimney Sweepers Regulation Act, 1864, s. 6), or bringing with him into

any house for the purposes of his business any person under sixteen (s. 7), is liable to a penalty not exceeding £10 (s. 8); and proof of age lies on the defendant (s. 10). Any person sending into a chimney (for the purpose of cleaning it or extinguishing fire therein) any person under twenty-one is liable to a penalty not exceeding £10 or to imprisonment not exceeding six months (Chimney Sweepers and Chimneys Regulation Act, 1840, s. 2; Chimney Sweepers Regulation Act, 1864, s. 9). Any person convicted under any of the sections above mentioned may be deprived of his certificate for the residue of its currency, or, if he does not hold a certificate, he may be disqualified from getting one for any period not exceeding one year (Chimney Sweepers Act, 1875, s. 20). Any person who, in order to obtain employment as a chimney-sweeper, knocks at houses from door to door, or uses a bell or any noisy instrument, or rings at a door-bell to the annoyance of inhabitants, is liable to a penalty not exceeding ten shillings for the first, and not exceeding twenty shillings for any subsequent offence (Chimney Sweepers Act, 1894, s. 1).

The Chimney Sweepers Act, 1875, ss. 5-14, provides for the issue of chimney-sweepers' certificates. A certificate must be taken out by any chimney-sweeper who employs a journeyman, assistant or apprentice (s. 9). It costs half-a-crown (s. 10) and is current for one year from the date of issue (s. 11). Any chimney-sweeper required to have a certificate but trading without one, or failing to produce it on demand to any person for whom he offers to sweep or to any justice or constable, is liable to a penalty of not more than ten shillings for a first offence, and of not more than twenty shillings for any subsequent offence (ss. 15, 17); and any chimney-sweeper failing to give, upon the like demand, his name and address is liable to a penalty of not more than ten shillings (s. 16).

Chirograph; Chirographer. A chirograph anciently signified a deed of two parts which were written on the same paper or parchment, with the word *chirographum* in capital letters between the two parts: the paper or parchment was then cut through the middle of the letters, and a part given to each party. If the cutting was indented, the deed was an indenture.

When fines of land were in use, the last step in the process of levying a fine was the chirograph, which was an engrossment of the substance of the whole matter, beginning *Hæc est finalis concordia*, and was retained by the purchaser as one of his title-deeds. It was conclusive evidence of the fine. The officer who made the engrossment was called the chirographer. See FINE.

Compare SYNGRAPH.

Chirographum apud debitorem repertum præsumitur solutum (*Halk.* 20). (When a person is in possession of a document under which he is bound to pay money, then a presumption arises that he has paid the money.) See the observations of Eldon, L.C.J., at p. 374 of 1 Stark.

Chivalry. See COURT OF CHIVALRY; GUARDIAN; KNIGHT-SERVICE.

Chivalry, Orders of. See KNIGHTHOOD, ORDERS OF.

Chop-church. One of "those secular priests who drove a trade or made an advantage by exchanging of their benefices" (*Par. Antiq. Glossary*).

Chose. A chose is a chattel personal (see CHATTEL); and is either in possession or in action.

Choses in possession are moveable chattels, —such as furniture, horses, and generally all goods and merchandise.

A chose in action is a right of proceeding in a Court of law to procure the payment of a sum of money (e.g., a bill of exchange, a policy of insurance, an annuity, or a debt), or to recover pecuniary damages for the infliction of a wrong or the non-performance of a contract. Originally the term was applied only to a right of action in the strict sense, that is, the right to bring an action at law, but subsequently it was extended to the right of taking proceedings in equity; thus the right to take proceedings to recover a legacy, or to recover a trust fund which has been misapplied by the trustee, is an equitable chose in action. The distinction is still of importance, as the provisions of the Judicature Act, 1873, s. 25, relating to assignment of choses in action are limited to legal choses in action.

In addition to what is said under ASSIGNMENT OF CHOSES IN ACTION it may be also said that before the Judicature Acts the rule that choses in action, with some exceptions, were not assignable at law was evaded by allowing the assignee to sue in the name of the assignor. And it should be noted that an assignment not covered by s. 25 (6) of the Judicature Act, 1873, remains subject to the former rules; therefore, an absolute assignment of an equitable chose in action, or an assignment of a legal or equitable chose in action, by way of charge, is effectual only in equity. As, however, the High Court is bound to give relief

in all cases in which relief would, before the Judicature Acts came into operation, have been given by a Court of Equity (*ib.*, s. 24), the distinction between the two kinds of choses in action (that is to say, those assignable at law and those assignable only in equity) is not of practical importance, except, perhaps, with reference to the Division of the Court in which relief should be sought.

Choses in action are of two classes, those which are immediately reducible into possession (see REDUCTION INTO POSSESSION), and those which are reversionary, such as a reversionary interest in Consols. The latter class were formerly of importance, from the fact that a reversionary chose in action belonging to a married woman could not be disposed of by her or the husband, or both together. Now, however, a woman married after 31st December, 1882, can dispose of any reversionary interest in personalty as if she were a *feme sole*. As to women married before 1st January, 1883, see ACKNOWLEDGMENT OF DEEDS.

Patents, copyrights, trade marks and similar rights, are generally classed as incorporeal personal property. See PERSONAL PROPERTY.

Chrismatis denarii. See QUADRAGESIMALS. The words *chrismatis denarii* mean the chrism pennies, the payment being for the chrism consecrated about Easter.

Christian Burial. This means interment in consecrated ground or in a consecrated building. See BURIAL.

Christian Name. In strictness, this means the name given to every person on his or her baptism. Now, in view of the fact that many persons in the country are not baptised and have acquired only by registration the names prefixed to their surnames, the term has acquired a meaning which is perhaps better expressed by the American term "front-name." A Christian name cannot be changed; in this it differs from a surname (q.v.).

Christianitatis Curia. A Court Christian (q.v.).

Christianity. Lord Hale said in 1676, "Christianity is parcel of the law of England"; which was true at that date. Chief Baron Kelly in 1867 said: "There is abundant authority for saying that Christianity is part and parcel of the law of the land"; which in 1867 was true to only a limited extent. The Sovereign and the Lord Chancellor must be Christians; the bishops—or some of them—are still *ex-officio* members of the House of Lords; and the Church of England is not as yet disestablished. But the law is not so clearly on the side of Christianity as it was two hundred years ago. See, for instance, BLASPHEMY.

Christmas Day. The 25th of December. It is an ecclesiastical festival. From the first it has been recognised as a public holiday; but, in point of law, there is, apart from statute or rules made under statutory authority, no difference between it and other days. The killing or taking of game on Christmas Day is prohibited by the Game Act, 1831, s. 3. That enactment does not apply to Good Friday (which always occurs in the close season for all game); but every other enactment, and every statutory rule, applying to Christmas Day applies also to Good Friday. On both these days premises licensed for the sale of intoxicating liquor must be closed during the same hours as on Sunday (Licensing (Consolidation) Act, 1910, s. 54, sch. 6); both days are bank holidays (q.v.) in England, and (Factory and Workshop Act, 1901, s. 35) are holidays in factories and workshops; for the purposes of the Bills of Exchange Act, 1882, both days are on the same footing as Sunday (see ss. 14, 92); on both days the offices of the Supreme Court are closed (R. S. C., Ord. 63, r. 6); no Admiralty instrument except a warrant may be served on either day (*ib.*, Ord. 67, r. 12); both days are excluded from the computation of any period less than six days allowed for doing any act (*ib.*, Ord. 64, r. 2); on both days County Court Offices are closed (Co. Ct. R., Ord. 1, r. 3); no County Court process (except a summons *in rem* or an Admiralty warrant) can be served or executed, and no County Court process need be issued on either day, but both days count in the computation of the days required for service (*ib.*, Ord. 54, r. 19). In London, police regulations may be made for the regulation of traffic during divine service on either day or on Sunday (Metropolitan Police Act, 1839, s. 51). See OLD CHRISTMAS DAY.

Church. A building consecrated for divine service according to the rites of the Church of England, and having an incumbent for the cure of souls within the parish in which the church is situated. Churches are divisible into—(a) what are commonly called parish churches, or churches belonging to original parishes; and (b) churches belonging to new parishes, formed by the separation or subdivision of original parishes under the provisions of the early Church Building Acts (q.v.) and the Acts relating to the Ecclesiastical Commissioners (q.v.). See PARISH; also CHANCEL; CHAPEL; FABRIC LANDS.

Church Assembly. See NATIONAL ASSEMBLY OF THE CHURCH OF ENGLAND.

Church Briefs. KING'S BRIEFS (q.v.).

Church Building Acts, 1818 to 1884. These are a series of nineteen Acts, for a list of which see the Short Titles Act, 1896, Sch. II. They were passed in order to provide additional churches in populous parishes. The administration of the Acts was at first entrusted to the Church Building Commissioners appointed under s. 7 of the Act of 1818 (58 Geo. 3, c. 45), from whom it was transferred in 1857 to the Ecclesiastical Commissioners (q.v.) by the Act of 1856 (19 & 20 Vict. c. 55).

Church Discipline Act, 1840, is the statute 3 & 4 Vict. c. 86, containing regulations for trying clerks in Holy orders charged with offences against ecclesiastical law, and for enforcing sentences pronounced in such cases. See DEPRIVATION; PUBLIC WORSHIP REGULATION ACT.

Church of England. See BISHOP; BISHOPRIC; CLERGY; CONVOCATION; NATIONAL ASSEMBLY.

Church-rate is a rate levied by the churchwardens of a parish for the repair of the church. Formerly such rates appear to have been recoverable in the Ecclesiastical Courts; but now, under the Compulsory Church Rate Abolition Act, 1868, s. 1, the payment of them is voluntary, except where they are levied under local Acts of Parliament, either (a) in lieu of tithes or for other good consideration (s. 5); or (b) to pay off money borrowed on the security of church-rates (s. 3).

Church-scot. In Anglo-Saxon times the householders of the parish each gave, for the support of the parish priest, a contribution of corn, known by the name of the Anglo-Saxon equivalent for the modern scot (q.v.). Later, the payment, from the fact of its being made in corn, came to be known as Church-seed, it being "*quasi*," says Coke, "*semen Ecclesiæ*"; and still later it was sometimes called hearth-money (q.v.). It was in addition to, and not in substitution for, tithe.

Churchwardens, at common law and in the ecclesiastical law, are parochial officers for several purposes, and are to inspect the morals and behaviour of the parishioners, as well as to take care of the goods and repairs of the church. They are a *quasi* corporation for the purpose of the custody of the ornaments of the church, and to sue for trespass upon the property of the church, but, except in London, they are not a corporation for the purpose of holding or acquiring land. See CORPORATION.

Apart from the common law churchwarden, there are churchwardens whose office has been created and whose duties are regulated by a number of statutes passed during the last hundred years to facilitate the building of churches and the formation of new parishes. See OVERSEERS.

Churchyard. By the common law, the rector of a church has the freehold in the churchyard, subject to the rights of the parishioners. See BURIAL.

Churl. See CEORL.

Cider. The fermented juice of apples. An excise duty, known as the "cider duty," whether it be upon cider or on perry, at the rate of fourpence per gallon is charged upon all cider or perry consumed in this country (Finance (New Duties) Act, 1916, s. 5), and a customs duty at the like rate is charged upon all imported cider or perry (Finance Act, 1916, s. 8). No excise or customs duties had previously been payable upon either cider or perry. See INTOXICATING LIQUORS.

Cinematograph. There is no statutory definition of this word. The *New English Dictionary*, under "Kinematograph," defines it as a "contrivance by which a series of instantaneous photographs taken in rapid succession can be projected on a screen with similar rapidity, so as to give a life-like reproduction of the original moving scene." An exhibition of pictures by such an apparatus, for the purposes of which inflammable films are used, shall not be given unless the regulations made by the Home Secretary are complied with or, save in the excepted cases, elsewhere than in premises licensed for the purpose (Cinematograph Act, 1909, s 1). An exhibition given *gratis* by a cinematograph-film dealer to possible purchasers, all of whom are specially invited, is not an exhibition within the meaning of the Act, which therefore does not apply. Nor (see s. 7 (4)) does the Act apply to an exhibition, to which the public are not admitted, given in a private house. Under s. 7 (2) a licence need not be taken out in respect of premises used occasionally, and on not more than six days in any one year, provided that the conditions prescribed in that sub-section are complied with. And under s. 7 (3) a licence need not be taken out in every county in which a moveable structure is used for cinematograph exhibitions; provided that the structure is licensed in some county and that the other conditions prescribed by the sub-section are observed.

Licences, lasting for one year from date of issue, are issued by county councils or councils of the counties of boroughs, who may delegate

their powers to such persons, including justices in petty sessions, as they please (ss. 2, 5, 6).

Using a cinematograph on premises in contravention of the Act is punishable summarily with a fine of not more than £20 and a further fine not exceeding £5 for each day that the offence continues, and the licence (if any) may be forfeited (s. 3).

The police and officers appointed for the purposes of the Act have a right of entry into premises believed to be used for cinematograph exhibitions, and any obstruction of their entry is punishable summarily with a fine not exceeding £20 (s. 4).

The regulations made under the Act are those of February 18, 1910 (S. R. & O., 1910, No. 189), and of May 20, 1913 (S. R. & O., 1913, No. 566).

Certain customs duties are imposed on cinematograph films by the Finance (No. 2) Act, 1915, s. 12.

The Celluloid and Cinematograph Act, 1922, makes (as the title sets out) " provision for the prevention of fire in premises where raw celluloid or cinematograph film is stored."

Cinque Ports are the five harbours of Hastings, Romney, Hythe, Dover and Sandwich. Extensive privileges were conferred on these ports by our early sovereigns, particularly by William the Conqueror and King John; Admiralty of the Cinque Ports, 1891, which are substantially the same as the Admiralty Rules of the Supreme Court. It sits in the church of St. James's, Dover, unless, by consent of parties, a case is heard elsewhere. It hears appeals from the commissioners (Cinque Ports Act, 1821, s. 4), and its decision is final (s. 5) Appeal also lies to it from any decision in an Admiralty matter, of a County Court within its jurisdiction (County Courts Admiralty Jurisdiction Act, 1868, s. 33), but its appellate jurisdiction is almost obsolete, the concurrent right of appeal to the High Court being generally availed of.

Circuits are divisions of the country for judicial business. For the purpose of holding assizes (q.v.), the country is divided into seven circuits, namely, the Northern, North-eastern, Midland, South-eastern, Oxford, Western, and North and South Wales, the last being divided into two divisions. The county of Surrey is not included in any circuit, but commissions for the discharge therein of civil and criminal business are issued not less than twice a year.

County Court circuits were created by the County Courts Act, 1846, s. 2, and these circuits were continued by s. 3 of the County Courts Act, 1888, which, however, by s. 4, empowers the Crown to alter them. As its name implies, a County Court circuit is a

Page 183, col 2, line 30: *For this line read*

"Appeal also lies to it from any decision, in an eral courts in which istrict holds sittings in

dus (5 *Co.* 31). (Circuity d.)

was where two or more ken to effect the same ffected by one. Thus, be circuity of action a debt, and B brought t A on a contract, instead claim against A in the

chant Shipping Act, 1894, s. 511); and his jurisdiction as Admiral of the Cinque Ports (Municipal Corporations Act, 1882, s. 256).

The commissioners within the Cinque Ports are persons nominated by the Lord Warden to determine certain questions as to salvage and claims for services to ships, by pilots or others, within the jurisdiction of the Cinque Ports (Cinque Ports Act, 1821, s. 15). As to the limits of the jurisdiction, see the Cinque Ports Act, 1821, s. 18.

The Admiralty Court of the Cinque Ports seems to have as extensive a jurisdiction in Admiralty matters within its local limits as the High Court of Justice. Its procedure is governed by the Rules of the Court of

first action; or where A sued B on a liability against which B had a guarantee or indemnity by C, and B brought an action against C on his guarantee or indemnity, instead of C defending the original action against B. Formerly circuity of action was the rule and not the exception, but now the provisions of the Judicature Acts relating to counter-claim, citation (q.v.), and other proceedings may be said to have abolished circuity of action as far as is practically possible.

Circular Notes. See LETTER OF CREDIT.

Circumcision, Feast of the. The 1st January.

Circumspecte Agatis is the title usually given to the stat. 13 Edw. I., defining the

respective jurisdictions of the temporal and ecclesiastical Courts in certain matters.

Circumstantial. See EVIDENCE.

Circumstantibus, Tales De. See TALES.

Circus. As to child performers, see CRUELTY TO CHILDREN; DANGEROUS PERFORMANCES.

Citation is the operation of calling upon a person who is not a party to an action or proceeding to appear before the Court in that action or proceeding.

In an action in the High Court, where a defendant claims to be entitled to relief (*e.g.* contribution or indemnity) against any person not a party to the action, he may, by leave, issue a notice to that effect, stating the nature of the claim, and requiring him to enter an appearance in the action; the notice is filed, and a sealed copy of it is served on the person, together with a copy of the statement of claim in the action (R. S. C. Ord. 16., r. 48). This is called citation or notice by defendant to third party. If the third party fails to appear, he cannot dispute the validity of any judgment obtained against the defendant citing him (*ib.*, r. 49). If he appears, it is the duty of the party citing him to apply to the Court for directions as to the mode of having the question in the action determined (*ib.*, r. 52). See THIRD PARTY.

In divorce practice, a citation corresponds in some respects with the writ of summons in ordinary actions; it is a document directed to the respondent or co-respondent, and commanding him to appear within a certain time after service; it cannot be extracted or issued until the petition has been filed; and after being served it is filed in the registry (Divorce Rules, 8-14).

In probate actions, citation is employed in order to give notice of the proceedings to persons whose interests are or may be affected by them, so as to give them an opportunity of appearing and taking part in the proceedings if they wish to do so. This is called citation to see proceedings. The person issuing a citation is called the party citant, and the person to whom it addressed the citee.

Formerly citation was also a mode of commencing a suit in the Probate Court: such citations were of various kinds, the principal being citations by an executor to the next of kin, etc., to see a will proved in solemn form: by a legatee to an executor to prove the will, or to bring in a probate to be revoked, &c. Under the present practice such suits or actions are now commenced by writ of summons.

Under the old Admiralty practice, where a ship, cargo, etc., was already under arrest in a cause and a second cause was instituted against it, the plaintiff in the latter issued, instead of a warrant, a citation *in rem*, commanding the marshal to cite all persons interested to enter an appearance; it was served in the same way as a warrant. Under the present practice a writ of summons *in rem* is issued. In an Admiralty action *in personam* the defendant was formerly cited to appear by a citation *in personam*; this is now done by a writ of summons in the ordinary form.

In the ecclesiastical courts generally, the issue of a citation is the usual mode of commencing a suit. It is a judicial act by which the defendant is commanded to appear in the suit. See DECREE; VIIS ET MODIS.

Citation (or Admonition) ad instantiam partis. Obsolete processes which issued out of the ecclesiastical courts: see the statute 22 & 23 Car. 2, c. 9.

Citation, Statute of. The popular title of the statute 23 Hen 8, c. 9, under which no man may be cited, except for a spiritual offence or heresy, before any ecclesiastical court outside the diocese in which he dwells.

City is a borough which has or has had a bishop, or which by letter patent has been created a city by prerogative of the Crown, as has been done during the last twenty years in the cases of Sheffield, Bradford, Hull, Leeds, Nottingham and Cardiff.

City of London Court was a Court having a local jurisdiction within the City of London. It was to all intents and purposes a County Court, having the same jurisdiction and procedure (County Courts Act, 1888, s. 185); and the judge was appointed by the Crown (Local Government Act, 1888, s. 42 (14)). It had exclusive jurisdiction in Admiralty matters within the City (County Courts Admiralty Jurisdiction Act, 1868, s. 2). See MAYOR'S AND CITY OF LONDON COURT.

Civil is opposed (i) to ecclesiastical; (ii) to criminal. As to civil death, see DEATH.

The "civil law" is an old-fashioned term for the Roman law, derived from the title *Corpus Juris Civilis*.

Civil Bill Court. An Irish Court with a jurisdiction analogous to that of the English County Court. The County Court judge presides; and he is also *ex officio* the chairman of, and in practice the sole judge at, quarter sessions. This is still so as regards Northern Ireland: the law as to Southern Ireland is unsettled at present.

Civiliter mortuus. Civilly dead. See DEATH.

Civil List. Each sovereign since George II. has at his or her accession surrendered to the nation the hereditary revenues (the profits of Crown lands (see DEMESNE, etc.)); and thereupon Parliament has made pecuniary provision for each sovereign for the period of his or her reign. This is done by an Act giving the sovereign an annual sum, known as the Civil List, for the support of the royal dignity and household. The Civil List Act, 1837, while providing for Queen Victoria, did not prospectively make provision for her husband and children; and this necessitated application to Parliament, resulting sometimes in undesirable debates, when she married and as her children married or came of age. The Civil List Act, 1901, provided not merely for King Edward, but for his children and for Queen Alexandra, so as to make further application to Parliament unnecessary; and the Civil List Act, 1910, is similarly framed. It fixes the Civil List at the yearly sum of £470,000 (s. 2); it gives to Queen Mary, in the event of her surviving the King, an annuity of £70,000 (s. 3); in the event of the marriage of the Prince of Wales, his wife is given an annuity of £10,000 to be increased to £30,000 if she survives him (s. 4); and it gives to each of the King's younger sons an annuity of £15,000 on his attaining twenty-one, and to each of the King's daughters an annuity of £6,000 on her attaining the same age or marrying (s. 5). The annual sum of £470,000 payable to the King is to be appropriated as follows:—(i) Their Majesties' privy purse, £110,000; (ii) Salaries of household and retired allowances, £125,800; (iii) Expenses of household, £193,000; (iv) Works, £20,000; (v) Royal bounty (q.v.), alms, and special services, £13,200; (vi) Unappropriated, £8,000 (s. 6; Sch.).

It will thus be seen that the King has only a little over £100,000 a year to dispose of as he pleases. No part of the annual sum of £470,000 payable to the King is, however, subject of income tax or super-tax, the King not being bound by any statute unless as expressly provided therein, and there being no such provision in any of the statutes relating to income tax. But it would appear that the other annuities granted by the Act are liable to income tax and super-tax: as to a queen consort or a queen dowager, see, however, QUEEN. By the Princess Louise Annuity Act, 1871 (34 Vict. c. 1), there was granted to the Princess Louise an annuity of £6,000 "free from all taxes, assessments and charges," and it was held in 1913 that, by reason of that exemption, the annuity was free of income tax and super-tax. But no such words are used in the Civil List Act, 1910, and there is nothing which warrants the importation of them into that Act. The Duke of Connaught and of Strathnairn Establishment Act, 1878, is the last Act granting an annuity to a member of the Royal Family in which those words occur.

Civil List Pensions. These are pensions of small amount, rarely exceeding in any case £200 a year, payable out of an annual sum of £1,200 charged upon the Consolidated Fund by the Civil List Act, 1837, s. 5. They can be granted by the Crown only "to such persons as have just claims on the royal beneficence, or who by their personal services to the Crown, by the performance of duties to the public or by their useful discoveries in science, and attainments in literature and the arts, have merited the gracious consideration of their sovereign and the gratitude of their country" (*ib.* s. 6). By the Civil List Act, 1910, s. 9 (1), these provisions are made to apply during the present reign and for six months afterwards; and under them pensions are frequently granted, not merely to such persons as are described therein but, on the ground of straitened circumstances, to the widows and daughters of such persons. The Civil List Act, 1910, s. 9 (1), expressly provides that such pensions shall not be charged on the sum paid for the Civil List, out of which such pensions had, up to the reign of William IV., been in fact paid, as is indicated by their name.

Civil Side. The legal business of the assizes is arranged according to the natural division of such cases as are merely civil, in which the disputes of subjects (citizens) as to property are decided, and those of a criminal nature, when men are charged with offences against the welfare of society at large. In the county-hall or court in which the trials take place, it is very usual for one side or portion of the building to be appropriated to the hearing of cases of the former character, and the other side or portion to the hearing of those of the latter character. And hence the phrase has become common that the judge is either sitting "on the civil side" or "on the criminal side," meaning thereby that he is either presiding at Nisi Prius or trying a prisoner, as the case may be. It is now customary for two judges to attend circuit together, and then one of them sits on the "civil," the other on the "criminal side."

Claim, generally, is the assertion of a right. See CONTINUAL CLAIM; STATEMENT OF CLAIM.

In administration actions and proceedings in the Chancery Division, and in winding-up (q.v.), persons who consider themselves to have rights against the assets in course of administration have to send in claims in the shape of formal notices to the executor or administrator, or to the liquidator.

In bankruptcy, persons who have claims against the estate of the bankrupt have to make them by proving their debts. See DEBT and PROOF.

At the end of the complete specification (q.v.) of an invention, there must be a clear statement of what the patentee claims to have invented. This is technically known as the claim, or as the claims if it be claimed that more than one thing has been invented.

See COURT OF CLAIMS.

Claimant is a person who makes a claim (q.v.) in an administrative proceeding.

The plaintiff in the old action of ejectment was called the claimant.

Claim of Liberty. Anciently this was a suit or petition to the king in the Court of Exchequer to have liberties and franchises confirmed there by the Attorney-General.

Clam, vi, aut precario. By stealth, violence, or supplication.

Clamea admittenda in itinere per attornatum. Anciently this was a writ commanding the justices in eyre (q.v.) to admit by attorney the claim of one who, by reason of his being on the king's service, could not appear personally.

Clarencieux King-at-Arms. See HERALDS.

Clarendon, Constitutions of. A series of enactments passed at Clarendon in 1164 by what was termed a parliament, although it was really more in the nature of a great council. These Constitutions enacted in substance that the king's courts should try all contested rights of advowson and presentation; ecclesiastics should obey the King's summons; appeals from the archbishop should be to the king alone; all disputes regarding lands between ecclesiastics and laymen should be tried by the king's justices; all pleas of debt, even though they were affected with trusts, should be determined in the king's courts; and other provisions of a similar character.

Clash. See CLOSH.

Class. Gifts by will to classes of persons, *e.g.* to the children, nephews, brothers, etc., of the testator or of another person, frequently give rise to the questions—at what time are the members of the class who are to share in the gift to be ascertained and at what time are their interests to be treated as vested. Rules of construction have been adopted by the Court, but they are too complicated to be stated here. See INQUIRY.

Classification. In Chambers in the Chancery Division, where, upon the hearing of the summons to proceed with the accounts and enquiries directed by a judgment or order, it appears to the judge (or master) that any of the parties form a class having the same interest (*e.g.* residuary legatees), he may require them to be represented by one solicitor, in order to prevent the expense of each of them attending by separate solicitors, and may give directions as to which of the parties are to attend on each of the accounts and inquiries directed by the judgment (R. S. C., Ord. 55, r. 40). This is termed "classifying the interests of the parties attending," or, shortly, "classifying" or "classification."

Clause Rolls. See CLOSE ROLLS.

Clauses Acts. The popular collective title of the Companies Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation Act, 1845, which apply to, for instance, every railway company unless, and in so far as, they are excluded or varied by the special Act (q.v.). See RAILWAY.

The title is also applied to other Acts of a like kind. See ACT OF PARLIAMENT.

Clausula generalis de residuo non ea complectitur, quæ non ejusdem sint generis cum iis quæ speciatim dicta fuerint (*Lofft.* 419). (A general clause of residuum does not include things not of the same kind with those which have been specially named.) Compare INCLUSIO, etc.

Clausula generalis non refertur ad expressa (8 *Co.* 154). (A general clause does not refer to things expressly provided for.)

Clausula vel dispositio inutilis per presumptionem vel causam remotam ex post facto non fulcitur (*Bac. Max. Reg.* 21). (An unnecessary clause or disposition is not upheld by a remote presumption or a cause arising after the event.)

Lord Bacon explains *clausula vel dispositio inutilis* "when the act or words do work or express no more than the law by intendment would have supplied"; and such a clause or disposition is not supported by any subsequent matter "which," as Bacon puts it, "may induce an operation of those idle words or acts."

Clausulæ inconsuetæ semper inducunt suspicionem (3 *Co.* 81). (Unusual clauses always

excite suspicion.) This was said of a clause setting out—in an unusual way—that a deed was executed *bona fide*.

Clausum fregit. See CLOSE.

Clausum paschæ. The Sunday next following Easter Sunday.

Claves insulæ. The ancient title of the Keys (q.v.) of the Isle of Man.

Clay's (Sir W.) Act. The former popular title of the Compound Householders Act, 1851.

Clayton's Case is the leading authority on appropriation of payments in a current account, *e.g.* that of a banker. In that case Devaynes, the partner in a banking firm, died on the 29th November, 1809, leaving a considerable estate, and the surviving partners carried on the business on their own account until July, 1810, when they became bankrupt. At the death of Devaynes, Clayton had a balance of £1,713 on his cash account with the firm. Between the death of Devaynes and the bankruptcy, the payments made to Clayton by the surviving partners largely exceeded the £1,713, and the payments so made amounted to £1,260 within a few days after Devaynes' death, and before they had received any money whatever from Clayton. But their subsequent receipts largely exceeded the payments, and at the date of the bankruptcy the balance due on the account exceeded the amount of the balance due at Devaynes' death. In these circumstances, Clayton claimed against the estate of Devaynes the £1,713, after deducting the dividends received by him in the bankruptcy of the surviving partners. But it was held that in an account of this kind, in the absence of an express appropriation by the creditor, the first sum paid in is the first one drawn out; in other words, that the first payment by the banker must be set against the first receipt, and so on: consequently, no part of the £1,713 remained due by the estate of Devaynes, because it had been drawn out by Clayton.

The rule in *Clayton's Case* does not apply where a person in a fiduciary position, *e.g.* a trustee, has paid money held by him in that character to his general account, and mixes it with his own money; for in such a case, when he withdraws money from the account for his own purposes, he is deemed to withdraw it from that part of the fund which belonged to him, so as to leave the trust money intact.

Clearance. The clearance of a vessel is a certificate issued by the Customs officials to the effect that she has complied with the Customs requirements and is at liberty to put to sea. The doing of the acts necessary for the obtaining of such certificate constitutes the "clearing" of the vessel.

Clear Days. The meaning of this expression depends on the context. Thus, where anything is to be done three clear days before a certain date, it means that three complete days are to elapse between the doing of the thing and the date named; whereas, if a thing is to be done three days before a certain date, only two complete days need elapse between the doing of the thing and that date. But where an order directs anything to be done within ten clear days, it means that such thing is to be done at latest on the tenth of the ten complete days after the order is made; and the effect of the order would be the same if the word "clear" were omitted.

Clement's Inn. See INNS OF CHANCERY.

Cleopatra's Needle. See ANCIENT MONUMENTS.

Clergy. The clergy of the Church of England consist of bishops (q.v.), priests (q.v.), and deacons (q.v.).

At common law no priest or deacon could be a member of the House of Commons. This disqualification was confirmed by the House of Commons (Clergy Disqualification) Act, 1801. No one in Holy orders can be a councillor, an alderman, or the mayor of a borough (Municipal Corporations Act, 1882, ss. 12 (1) (*b*), 14 (3), 15 (1)). But where a clergyman executes a deed relinquishing his profession he ceases to be subject to either of the disqualifications above mentioned (Clerical Disabilities Act, 1870; Local Government Act, 1882, ss. 7 (1), 242, Sch. 9 (Pt. II.); Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 28). Under the Local Government Act, 1888, s. 2 (2) (*a*), any minister of religion may become a councillor or alderman of a county council; and he may also be elected a member of any parish council, district council, or board of guardians (Local Government Act, 1894, ss. 23 (1), 31 (1)), or of any London borough council (London Government Act, 1899, s. 2 (5)).

A clergyman is not bound at common law to serve in any public office, and he is specially exempted from serving on juries by the Juries Act, 1870, s. 8. But if he takes advantage of the Clerical Disabilities Act, 1870, he becomes in point of law a layman for every purpose whatsoever.

No clergyman who holds any benefice or is licensed to perform ecclesiastical functions may farm land to a greater amount than eighty acres, without the leave of the bishop, or take any land on a lease of more than seven

years to farm it (Pluralities Act, 1838, s. 28), or trade in any way except as a shareholder (s. 29), or as a schoolmaster (s. 30). If he contravenes these enactments, he may, for a first offence, be suspended for not more than a year, and for a second offence to be suspended for any period, and for a third offence be deprived (s. 31); and moreover he is to forfeit forty shillings per acre for each year in respect of any land farmed in excess of the area allowable under s. 28 (s. 28).

At common law it was illegal for a clergyman to engage in trade, and therefore any contracts made by him *qua* trader were void. Any such contract is now, of course, void not only at common law but as being in contravention of the Pluralities Act, 1838.

Clerico admittendo. A writ anciently directed to a bishop directing him to admit to a benefice a clerk presented thereto by the party who had sued out the writ.

Clerico capto per statutum mercatorum. A writ anciently issued for the delivery out of prison of a clerk imprisoned for a breach of a statute merchant.

Clerico convicto commisso gaolæ in defectu ordinarii deliberando. A writ anciently issued for the delivery to his ordinary of a clerk who had been convicted of felony, and committed to gaol by reason of benefit of clergy not having been claimed.

Clerico infra sacros ordines constituto non eligendo in officium. A writ which anciently issued to restrain anyone from making a clerk in Holy orders serve in a public office. See CLERGY.

Clericus non connumeretur in duabus ecclesiis. A clerk is not to be given two churches—an ancient prohibition of pluralities.

Clerk; Clericus. Anciently this meant anyone, whether a priest or a deacon, who was in Holy orders. It also meant a secular priest, that is to say, one who did not belong to a religious order, as distinguished from a priest who belonged to a religious order.

It was also used as part of the title of anyone performing what would now be called clerical duties; and when, in such a case, the Latin word is used, it may be taken that the office dates from before the Reformation.

Clerk Controller of the King's House. An officer of the king's household who performed functions analogous to those of the officer of the royal household now known as the Comptroller. See the statute 33 Hen. 8, c. 12.

Clerk Marshall of the King's House. An officer of the Court of the Marshalsea (q.v.).

Clerk of Affidavits. An official of the former Court of Chancery who filed all affidavits sworn therein. His office was abolished, as from 28th October, 1852, by the Court of Chancery Act, 1852, s. 29, which describes it as the Affidavit Office of the Court of Chancery.

Clerk of Arraigns. An assistant of the Clerk of Assize (q.v.).

Clerk of Assize. This is the principal officer attached to the assizes. No person can be appointed to the office unless he has been for three years in actual practice either as a barrister, a special pleader or conveyancer, or a solicitor, or unless he has been for three years a subordinate officer of a clerk of assize on circuit (Clerks of Assize, &c., Act, 1869, s. 3). The appointment is made by the senior judge going the circuit for the summer and winter assizes (Judicature Act, 1884, s. 21) The clerk of assize takes charge of and reads the commission, and performs on the civil side duties analogous to those of a master (q.v.) or associate (q.v.), the corresponding duties on the Crown side being performed by the clerk of arraigns.

Clerk of Dispensations and Faculties. In 1798 this office in the Court of Chancery was held by Mr. Apsley Bathhurst, son of Lord Bathhurst, who, when Lord Chancellor, had appointed him. After paying £70 to a deputy and some other expenses, he drew a clear income of about £380 a year from the office. The duties were connected with the confirmation and registration of ecclesiastical faculties, various degrees in Arts, etc. See *Commons Committees Reports* (1803), Vol. 13, p. 269.

Clerk of Enrolments was the chief officer of the Enrolment Office (q.v.). His office was created by s. 3 of the Court of Chancery Act, 1842, and was abolished by the Supreme Court of Judicature (Officers) Act, 1879, s. 14 and Sch. I. (Pt. II.).

See SIX CLERKS.

There was also a Clerk of Enrolments to the Court of Bankruptcy. His office was created by the statute 5 Geo. 2, c. 30, s. 41, and was abolished by the statute 5 & 6 Vict. c. 122, s. 74. The latter enactment transferred the duties of the office to the Chief Registrar in Bankruptcy, who himself was in time abolished by the statute 15 & 16 Vict. c. 77, s. 3.

Jacob, writing in 1749, states that there was in the Court of Common Pleas a Clerk of Enrolments whose duty it was to "inroll and exemplify all fines and recoveries, and return writs of entry, summons and seisin." He seems to have been represented in 1798

by the Clerk of Warrants, Inrolments and Estreats. See *Commons Committees Reports* (1803), Vol. 13, p. 290.

Clerk of Reports. An official of the former Court of Chancery. His office was abolished by the Court of Chancery Act, 1852, s. 29.

Clerk of the Acts. A former official of the Navy Office whose duty it was to record all orders, &c., of the Lord High Admiral or of the Lords Commissioners of the Admiralty.

Clerk of the Appeals. An office of the old Court of Chancery which had ceased to exist before 1798, presumably because it was worth only about £2 a year. See *Commons Committees Reports* (1803), Vol. 13, pp. 205, 265.

Clerk of the Bails. An official of the former Court of King's Bench who filed all the bail-pieces (q.v.) taken in that court. His office has long since been abolished.

Clerk of the Briefs. An officer (receiving about £150 a year) of the Court of Chancery. His duties seem to have been much the same as those of the Secretary of the Briefs (q.v.). See *Commons Committees Reports* (1803), Vol. 13, p. 264.

Clerk of the Check. Anciently this was an officer of the royal household who was responsible for the arrangements as to the duties, etc., of the yeomen of the guard and other yeomen employed about the court. See the statute 33 Hen. 8, c. 12.

An officer of the same name was employed at Plymouth in connection with the navy. See the statute 19 Car. 2, c. 1.

Clerk of the Crown in Chancery. This officer is appointed under the Royal Sign Manual and performs the duties formerly performed by the Clerk of the Hanaper (q.v.) (Great Seal (Offices) Act, 1874, s. 8), so far as any such duties still exist. He performs the duties (other than those connected with the administration of justice) which before 1874 were vested in the Clerk of the Petty Bag (q.v.), including all duties and powers with regard to letters patent and writs passed under the Great Seal (Great Seal (Offices) Act, 1874, s. 5), or having the wafer Great Seal attached to them (see Crown Office Act, 1877, ss. 4, 5, and the rules made thereunder). He is Clerk of the Court of the Lord High Steward. See PATENT OFFICE.

Clerk of the Custodies of Lunatics and Idiots. An official of the former Court of Chancery, whose office was abolished, and whose duties were transferred to the Commissioners of Lunatics, by the statute 5 & 6 Vict. c. 84, s. 10.

Clerk of the Declarations. An officer of the old Court of King's Bench whose duty it was to file declarations (q.v.) to causes therein pending. His office was abolished by the Superior Courts (Officers) Act, 1837, s. 2.

Clerk of the Deliveries. A former officer of the Tower of London who recorded all issues of stores, ammunition, etc.

Clerk of the Errors; Clericus errorum. In each of the Courts known as the King's Bench, the Exchequer and the Exchequer Chamber, and the Common Pleas, there was formerly an official known as the clerk of the errors, each of whom performed various functions in connection with proceedings in error (q.v.). They were all abolished by the Superior Courts (Officers) Act, 1837, ss. 1, 2.

Clerk of the Escheats; Clericus extractorum. Formerly there was an official of the Exchequer to whom the escheats (q.v.) were delivered each term out of the Lord Treasurer's Remembrancer's Office. See REMEMBRANCERS.

Clerk of the Essoins. An officer of the former Court of Common Pleas who kept the Essoin (q.v.) Rolls. He was abolished by the Superior Courts (Officers) Act, 1837, s. 2.

Clerk of the Hanaper. This was formerly an officer on the common law side of the Court of Chancery who, in the days when every action was commenced by an original writ issuing from the Chancery, registered the fines that were paid on every writ, and saw that the writs were sealed up in bags, in order to be opened afterwards and issued: these writs and the returns to them were originally kept in a hamper (*in hanaperio*). It was also the duty of the Clerk of the Hanaper to take an account of all patents, commissions and grants that passed the Great Seal. By the Court of Chancery Act, 1852, the duties of the office were transferred to the Clerk of the Crown in Chancery (q.v.), and by the Judicature Act, 1873, ss. 16, 77, they, or such of them as still existed, were transferred to the Central Office of the Supreme Court. See CLERK OF THE CROWN; COMPTROLLER.

Clerk of the House of Commons is one of the chief officers of the lower house. He is appointed by the Crown as under-clerk of the Parliaments to attend upon the Commons. He makes a declaration on entering upon his office to make true entries, remembrances and journals of the things done and passed in the house. He signs all orders of the house, indorses the bills sent or returned to the Lords, and reads whatever is required to be read in the house. He has the custody of all records and other documents.

Clerk of the Juries; Clericus juratorum.

An officer of the former Court of Common Pleas who, at common law, performed various functions in connection with juries in civil cases. His office was abolished by the Superior Courts (Officers) Act, 1837, s. 2.

Clerk of the King's Great Wardrobe. An officer of the royal household who anciently kept an inventory of the king's wardrobe. See the statute 1 Edw. 4, c. 1.

Clerk of the King's Silver; Clericus argenti regis. An officer of the former Court of Common Pleas. He was concerned with fines (q.v.) levied in that court and with the obsolete writ of covenant (q.v.).

Clerk of the Markets; Clericus mercati hospitii regis. Anciently this was an officer of the royal household who had custody of the standard weights and measures, and saw that correct weights and measures were used throughout the realm. The Crown used, however, frequently to grant to boroughs charters empowering the corporations themselves to hold Courts of the Clerk of Markets. This ousted the jurisdiction of the Clerk of the Markets within the borough; and, moreover, the repealed statute 16 Car. 1, c. 19, provided that the Clerk of the Markets should act only within the "verge" (q.v.), and that head officers should act in corporations.

The functions of the Clerk of the Markets and all Courts of the Clerk of the Markets which they used to hold, have become entirely obsolete as the result of the enactment of the various statutes regulating weights and measures (q.v.).

Clerk of the Nihils; Clericus nihilorum. An officer of the former Court of Exchequer who enrolled all sums "nihiled" by sheriffs upon writs of estreat (q.v.). In 1798 the office was worth about £15 a year (see *Commons Committees Reports* (1803), Vol. 13, p. 271). See NIHIL.

Clerk of the Ordnance. A former officer of the Tower of London whose duty it was to record all orders which concerned military arms and stores.

Clerk of the Paper Office. An officer of the former Court of King's Bench who was concerned with special pleadings and demurrers. These he made up into books. His office was abolished by the Superior Courts (Officers) Act, 1837, s. 1, Sch. A, his duties being transferred by s. 5 of that Act to one of the Masters of the Queen's Bench appointed under that Act. See PAPER OFFICE; MASTER OF THE KING'S BENCH.

Clerk of the Papers. An officer of the former Court of Common Pleas who discharged various functions in connection with the Fleet Prison. He is mentioned at p. 304 of the *Commons Committees Reports* (1803).

Clerk of the Parliaments. This is one of the chief officers of the House of Lords. He is appointed by the Crown, by letters patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the parliaments, and to keep secret all such matters as shall be treated therein. Under the Acts of Parliament (Commencement) Act, 1793, he indorses on every Act the date on which it receives the royal assent.

Clerk of the Patents. A chancery official, holding under letters patent and acting by a deputy, who was concerned with letters patent under the Great Seal. He was abolished by the Lord Chancellor's Pension Act, 1832, s. 1.

Clerk of the Peace; Clericus pacis. Anciently it would have been sufficient to say that this is an officer appointed by the Custos Rotulorum (q.v.), to keep the county records and to assist the justices of the peace in quarter sessions, not only in drawing indictments, entering judgments, issuing process, etc., but also in administrative business.

But the Local Government Act, 1888, transferred the administrative business to the county council, and s. 83 converted the clerk of the peace into clerk to the county council, except in the county of London. Vacancies since 1888 are filled by the joint committee of the county justices and the county council (*ib.*), and the committee can, for sufficient reason, remove any clerk of the peace appointed since 1888 (*ib.*). A deputy to the clerk of the peace may be appointed and removed by the committee (*ib.*, Recorders, Stipendiaries and Clerks of the Peace Act, 1906, s. 1).

In all boroughs having a court of quarter sessions the clerk of the peace is appointed to hold office during good behaviour by the town council, and is removable by the recorder (Municipal Corporations Act, 1882, s. 164 (1), (2), (3), (4); Local Government Act, 1888, s. 119).

A deputy to the clerk of the peace may be appointed and removed in a borough by the clerk himself (Municipal Corporations Act, 1882, s. 164 (3)), or, in the event of the clerk's incapacity, by the borough council (Recorders, Stipendiaries and Clerks of the Peace Act, 1906, s 1); and in counties the deputy may be appointed (Local Government Act, 1888, s. 83 (4), or removed (6 Edw. 7, c. 46, s. 1) by the joint committee.

It is not illegal, but it would be grossly

improper, for a clerk of the peace to appear professionally before his court.

The clerk of the peace, except in a borough (where the town clerk keeps many of the records), is responsible for all the records. On the administrative side, he is the chief officer of his council. At quarter sessions he discharges functions analogous to those performed by the clerk of assizes (q.v.). at assizes.

Clerk of the Pells; Clericus pellis. An officer of the Exchequer whose duty it was to enter all moneys received from the tellers (q.v.) in a parchment roll called the *Pellis receptorum*, and to enter all payments in another roll called the *Pellis exituum*. Long after the days of parchment rolls the Clerk of the Pells continued to be an officer of the Exchequer. His office was abolished only in 1834 by the statute 4 & 5 Will. 4, c. 15, s. 1. See PELLS, ETC.; COMPTROLLER.

Clerk of the Petty Bag; Clericus parvæ bagæ. An officer of the Court of Chancery whose duty it used to be to record the return of all inquisitions out of every shire; to make out patents of customers, gaugers, controllers, and aulnagers; all *congés d'élire* for bishops; the summonses of the nobility, clergy, and burgesses to Parliament, etc. (33 Hen. 8, c. 22). The office was abolished by the Supreme Court of Judicature (Officers) Act, 1879, s. 14 and Sch. (Pt. II.). See PETTY BAG; CLERK OF CROWN IN CHANCERY; LAW SOCIETY.

Clerk of the Pipe; Clericus pipæ. An officer of the Exchequer who anciently kept the Pipe (q.v.) Roll, and also passed the accounts of the sheriffs. In 1798, the office was held, under patent from the Crown, by Lord William Bentinck for his life. He did nothing whatever except draw the £630 a year which remained after he had paid the two secondaries (q.v.) and the six attornies who did the actual work (*Commons Committees Reports* (1803), Vol. 13, p. 310). The office was abolished by the Fines Act, 1833, s. 41, which recited that some of the duties had been, or by that Act were being, transferred to other offices, and that the other duties were obsolete. See INGROSSATOR, ETC.; QUIETUS; SURPLUSAGE.

Clerk of the Pleas; Clericus placitorum. An officer of the former Court of Exchequer in whose office all officers of that court claimed their privilege (q.v.) to sue or be sued in that court. In his office were also prosecuted actions at law by such other persons, not being officers of the Court of Exchequer, as were indebted to the king; and this, by a legal fiction was held to include everyone. He had under him many clerks who were all attorneys of the Court of Exchequer (q.v.). He (like the Clerks of the Rules, of the Supersedeas, of the Treasury, of the Warrants, *infra*) was abolished by the Superior Courts (Officers) Act, 1837, s. 1, Sch. (A).

Clerk of the Rolls. Described by Jacob (1749) as an officer of the former Court of Chancery who searched for deeds and made copies thereof. Possibly he is the "Clerk of Records in the Rolls Chapel" mentioned at p. 265 of the *Commons Committees Reports* (1803), Vol. 13.

Clerk of the Rules. An officer of the former Court of King's Bench who drew up rules (q.v.) and orders in that court.

Clerk of the Sewers. This was what would now be termed the secretary of the Commissioners of Sewers (q.v.).

Clerk of the Signet; Clericus signeti. An officer whose duty it was to attend on his majesty's principal secretary, who always had the custody of the privy signet (q.v.), as well for the purpose of sealing his majesty's private letters, as also grants which passed his majesty's hand by bill signed; there were four of these officers, appointed under the statute 27 Hen 8, c. 11. Their offices were abolished by the statute 14 & 15 Vict. c. 82, s. 3.

Clerk of the Supersedeas. An officer of the former Court of Common Pleas who made out writs of *supersedeas* (q.v.).

Clerk of the Treasury; Clericus thesaurii. An officer of the former Court of Common Pleas. He kept the records of that court, made exemplifications of them, and received all fees due for searches. He held office at the pleasure of the Chief Justice of the Common Pleas. In 1798 the Chief Justice himself held the office and executed it through his clerk. See *Commons Committees Reports* (1803), Vol. 13, p. 300.

Clerk of the Warrants; Clericus warrantorum. An officer of the former Court of Common Pleas who entered all warrants of attorney (q.v.), enrolled indentures of bargain and sale (q.v.) acknowledged in that court, and estreated into the Exchequer all fines, etc., which became due to the king in that court. See CLERK OF ENROLMENTS.

Clerks in Court. These were officers of the Court of King's Bench who until 1844 conducted the business of that Court on the Crown side. Their offices were abolished by s. 1 of the statute 6 & 7 Vict. c. 20; and that statute, by s. 14, admitted attorneys and the solicitors of several public boards to practise on the Crown side in their place.

Clerks of Indictments are officers attached to the Central Criminal Court and to each circuit. They prepare and settle indictments against offenders and assist the clerk of arraigns (q.v.).

Clerks of the Privy Seal; Clerici privati sigilli. These were four officers who formerly were part of the staff of the Lord Privy Seal (q.v.). They dealt with such documents as were sent from the Privy Signet (q.v.) to the Privy Seal, and which were to be passed to the Great Seal (q.v.), and they also used the Privy Seal in connection with loans to the Crown. They were abolished by the statute 14 & 15 Vict. c. 82, s. 3.

Clerks of Records and Writs were officers formerly attached to the Court of Chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, keeping a record of suits, and certifying office copies of pleadings and affidavits. They were three in number, and the business was distributed among them according to the letters of the alphabet. (See REFERENCE TO RECORD.) By the Judicature Acts, 1873, 1875, they were transferred to the Chancery Division of the High Court. By the Judicature (Officers) Act, 1879, they were transferred to the Central Office of the Supreme Court, under the title of Masters of the Supreme Court, and the office of clerk of records and writs was abolished. See CENTRAL OFFICE; MASTER OF THE SUPREME COURT; SIX CLERKS.

Clerks of Seats. These are officers in the Principal Registry of the Probate Division who discharge the duty of preparing and passing the grants of probate and letters of administration, under the supervision of the registrars. There are six seats, the business of which is regulated by an alphabetical arrangement, and each seat has four clerks. They have to take bonds from administrators and to receive caveats against a grant being made in a case where a will is contested. They also draw the "acts," that is, a short summary of each grant made, containing the name of the deceased, amount of assets and other particulars.

Clifford's Inn. See INNS OF CHANCERY.

Clink. See PRIVILEGED PLACES.

Clito. This, in Anglo-Saxon times, meant a son of the king.

Clocks. See WATCHES.

Clog on Equity of Redemption. It is a well-settled rule of law that no mortgage deed may contain any provisions which impede the right of the mortgagor to exercise his "equity of redemption" (q.v.) within a reasonable time, and that any such provision (known as a "clog on the equity of redemption") is void. Thus provisos against redemption for twenty and thirty years have been disallowed; but, on the other hand, provisos against redemption for such periods as seven or five years are usual and will be upheld.

Close. In the law of real property, "close" signifies a piece of land, and a trespass on a man's land was formerly described as a breach of his close, or trespass *quare clausum fregit*. "For," says Blackstone, "every man's land is in the eye of the law enclosed and set apart from his neighbour's; and that either by a visible and material fence, as one field is divided from another by a hedge, or by an ideal, invisible boundary, existing only in the contemplation of the law, as when one man's land adjoins to another's in the same field." See BOUNDARIES; TRESPASS.

In procedure, "close" signifies conclusion. Thus the close of the pleadings is where the pleadings are finished, that is, when issue has been joined. See PLEADING; ISSUE.

Close Rolls and Close Writs. Certain letters of the King sealed with his Great Seal and directed to particular persons and for particular purposes, and not being proper for public inspection, are closed up and sealed on the outside. They are thence called writs close (*literæ clausæ*), and are recorded in the close rolls in the same manner as others are in the patent rolls (*literæ patentes*), or open letters.

Close Seasons. The periods of the year during which it is forbidden to kill or take game, freshwater fish, sea fish, oysters, or as the case may be. The annual close season varies for different kinds of game, but the period 1st March to 1st August is included in the close seasons for all kinds of game, except hares (q.v.). The period may vary according to the mode of capture adopted; thus, the time during which salmon are protected from capture by nets is always longer than the time during which it is forbidden to take them with rod and line. In addition to the annual close time, there is also, in the case of salmon netting, a weekly close season, which is normally from noon on Saturday to 6 a.m. on Monday. Most kinds of game cannot be killed on Christmas Day or on Sunday, and the Wild Birds Protection Acts, 1880 to 1908, protect most species of birds between 1st March and 1st August; but these two periods of exemption are not technically close seasons.

Closh. The "newly-imagined games called closh, kailes, half bowl, hand in and hand out, and queck board" were prohibited, under a penalty of two years' imprisonment, by the statute 17 Edw. 4, c. 3, which began by reciting that it was unlawful to play dice, quoits or football, but enacted no penalties in respect of these last three games.

"Closh" (also called "clash") seems to have been something like the modern croquet; kailes (or kayles) was ninepins; half bowl was roly-poly; hand in and hand out was some kind of ball game; and queck board would seem to have been some game played upon a chequered board or chess board.

The prohibition of these games was in order to prevent men from being diverted from the practice of archery, as appears clearly from the statute.

Clough. An allowance of two pounds on every hundredweight which was formerly given under the *lex mercatoria* when goods were bought wholesale by weight.

Clove. An ancient measure of cheese equivalent to eight pounds. See the statute 9 Hen. 6, c. 8.

Club. A club is a voluntary association of persons for social purposes, and sometimes also for purposes of a literary or political nature, or the like. A club is not a partnership. In some clubs the expenses are borne by a contractor, who receives the subscriptions of the members, and makes his profit out of the difference: these are called proprietary clubs.

A club is regulated by the rules agreed to by the members and for the time being in force, and therefore if a member is expelled from a club by a decision which has been arrived at *bona fide* in accordance with the rules and in a judicial manner, without caprice or improper motive, the Court cannot interfere. In a proper case, however, the Court will grant an injunction to prevent a member from being deprived of the benefits of the club.

In proprietary clubs it was unlawful even before 1902 to supply intoxicating liquor to members unless the proprietor held a licence for the sale of intoxicating liquors. Down to 1902 the sale of liquor to members in a club which was not a proprietary club was not in any way regulated by the law; but in 1902 the sale of liquors in all clubs was regulated by the Licensing Act, 1902, ss. 24-28. Those enactments have been repealed and are replaced by the Licensing (Consolidation) Act, 1910, ss. 91-98. Under ss. 91 and 92 of the Act of 1910, every club in which liquor is sold must be registered with the clerk to the justices of the petty sessional division in which the club is; under s. 95 a club which is not properly conducted may be struck off the register; and under s. 93 the sale of intoxicating liquor in an unregistered club is punishable on summary conviction with a fine not exceeding £50, or with imprisonment not exceeding one month or with both, and, if intoxicating liquor is kept for sale or supply in any unregistered club, every officer and member of the club is liable to a penalty of not more than £5 unless he can show that the liquor was so kept without his knowledge.

Coadjutor. The coadjutor of an executor was the same thing as an overseer (q.v.). In the old writers, coadjutor signifies one who disseises a person of land to the use (that is, for the benefit) not of himself, but of another. It now is used only as meaning an assistant to a bishop (q.v.).

Coal. All coal must be sold by weight only unless the purchaser consents in writing to sale by boat, load, waggon, or tubs, delivered from the mine into the premises of the purchaser (Weights and Measures Act, 1889, s. 20 (1)). A consignment note, in the prescribed form, must be sent with any quantity exceeding two hundredweight which is sent by vehicle (s. 21).

It would seem that coke is not coal for the purposes of these enactments.

Coal Mines. The law as to coal mines was codified by the Coal Mines Act, 1911, which, out of the pre-existing legislation on the subject, left unrepealed, or unrepealed as regards coal mines, only a few sections of the Coal Mines Regulation Act, 1887, which had itself been a codifying Act, the two sections which constitute the whole of the Coal Mines (Checkweighers) Act, 1894, the Coal Mines (Weighing of Minerals) Act, 1905, and the Coal Mines Regulation Act, 1908 (popularly known as the Eight Hours Act). The Coal Mines Act, 1911, has been amended as regards s. 14 by the Coal Mines Act, 1914, and as regards s. 9 by the Police, Factories, Etc (Miscellaneous Provisions) Act, 1916, s. 10; and the Coal Mines Regulation Act, 1908, has been changed by the Coal Mines Act, 1919, into what is a Seven Hours Act.

In addition to these permanent enactments, there is the Coal Mines (Minimum Wage) Act, 1912, which is in form a temporary Act, kept alive only by the annual Expiring Laws Continuance Acts.

The effect of the enactments at present in

force is that miners have a minimum wage, a low maximum number of working hours, women and children and young persons cannot be employed at all below ground, while on the surface their employment is strictly regulated, and most elaborate arrangements are made for the safety and well-being of all persons working in coal mines. See CHECKWEIGHER.

Coal Note. The statute 3 Geo. 2, c. 26, s. 7, provided that any person buying out of any vessel in the port of London must pay for it either in cash or by a promissory note containing the words "Value received in Coals." Any person giving or receiving a promissory note for coals so bought which did not contain those words was liable to a penalty of £100 (*ib.*, s. 8). Notes drawn in accordance with the statute—which was repealed by the S. L. R. Act, 1867 were known as coal notes.

Coal-whippers. These were labourers who discharged colliers in the port of London with a primitive arrangement of a basket or other receptacle, a block and a rope. Under the statutes 6 & 7 Vict. c. ci., and 9 & 10 Vict. c. 36, and the Coal-whippers (Port of London) Act, 1851 (which were of temporary operation and collectively covered only the period from 23rd August, 1843, to 31st December, 1856), it was unlawful for any person to act in the port as a coal-whipper unless registered as such at the office of the registrar appointed under the Acts.

Coast Blocade. This was the name of an arrangement for preventing smuggling during the Napoleonic Wars. It was carried out by men commanded by naval officers and under naval discipline, who operated from centres known as "blocade stations" and consisting of the Martello Towers along the Kent and Sussex coasts. It was discontinued in 1831.

Coast-guard. The force now known as the Coast-guard represents the various forces which from time to time were used to prevent (i) invasion and (ii) smuggling. From the thirteenth century down to 1660, the defence of the coast devolved upon the maritime counties: in 1660 it passed to the militia (q.v.), in whose hands it remained, theoretically at least, until 1857. From early times there were customs officers to prevent smuggling; by 1822 there had grown up an anti-smuggling organisation which consisted of (1) revenue cutters, (2) riding officers (drawn from cavalry regiments), and (3) the "preventive water-guard" (composed of men in the navy under the command of naval officers).

These three bodies were, by Treasury order, consolidated in 1822 into a body known as the Preventive Service, which was under the command of a Comptroller-General, who himself was subordinate to the Customs Commissioners. In 1829 the Preventive Service became, by Treasury minute, the Revenue Coast-guard, and the riding officers became the Mounted Guard. In 1831 the Mounted Guard was given up, and the Admiralty managed the rest of the service for the Customs Commissioners. By the Coast-guard Service Act, 1856, the Customs Commissioners were eliminated, and the Admiralty was left in exclusive control.

The Coast-guard is now supposed to prevent smuggling and to defend the coasts. But the number of men employed—the number authorised by the Act of 1856 was 10,000—and the number of coast-guard stations have been much reduced, and the importance of the force has diminished.

Cocaine. See DRUGS, DANGEROUS.

Cochering; Coshering. The right claimed by the ancient Irish chieftains to quarter themselves and their dependants upon their tenants.

Cocket. A parchment document sealed by the Customs which formerly was given to the owner of customed goods as evidence of the payment of the duties. Anciently it was known as *Literæ de Coketto* or *Literæ Testimoniales de Coketto*.

Cock-fighting. This is illegal. The enactment at present in force on the subject is the Protection of Animals Act, 1911, s. 1 (1) (*a*).

Co-creditors; Co-debtors; Co-owners. See JOINT.

Code; Codification. The term "code" is used in various senses. In the *Corpus Juris Civilis* it is used to signify a consolidation of the statute law, namely, a collection of enactments arranged systematically, with all obsolete and inconsistent enactments omitted. In modern times the term is more commonly used to signify a new enactment containing legislative rules of law relating to a particular subject (*e.g.* civil law, criminal law, procedure, evidence or the like). Such a code differs from that of Justinian in being expressed in new language, instead of being a mere re-arrangement of existing enactments.

A code differs from a digest (q.v.) in consisting of abstract rules of law: a digest, in the proper sense of the word, is a collection of concrete cases.

Codification is the process of converting the law of a country, or a portion of it, into a code, whether that law consists of statutes, or case-law, or customs, or all three. Codifi-

cation is in theory a formal process, as opposed to legislation: that is, the codifier takes the law as he finds it, without reference to its expediency, and merely puts it in a more convenient shape; in practice, however, codification is impossible without introducing amendments of the law, in matters of detail at least.

The most celebrated modern codes are those of Napoleon. Several codes have been promulgated in India, and a code of the criminal law has frequently been under discussion in this country. We have, however, not got farther than the codification of particular branches of the law by means of such statutes as the Bills of Exchange Act, 1882.

Codicil. A codicil is an instrument executed by a testator for adding to, altering or explaining a will previously made by him. It is in law part of the will, and the will and codicils (if more than one) make but one testament. A codicil must be executed with the same formalities as a will (Wills Act, 1837, ss. 1, 9). Before the Wills Act, 1837, a testator could make a nuncupative (or word of mouth) disposition of property undisposed of by his written will, and such a disposition was called a nuncupative codicil. Nuncupative testamentary dispositions have been abolished by the Wills Act in all but a very few cases. See WILL.

In Roman law *codicilli* meant an informal or "unsolemn" testamentary disposition, as opposed to a *testamentum*, which appointed a *hæres* or executor, and was executed with formalities (*Just. Inst.* ii., 25). It is said by old writers that in English law also "codicil" meant an "unsolemn last will," not containing the appointment of an executor, but whether this is really so, or whether these writers merely copied the passages on codicils from Justinian, is not clear.

Cofferer of the King's Household. An official immediately subordinate to the Controller of the King's Household (q.v.). He paid all wages in the household and accounted to the Exchequer. See the statute 39 Eliz c. 7.

Cogitationis pœnam nemo meretur (2 *Inst Jur. Civ.* 658). (No man deserves punishment for a thought.) But although the general rule of our law is that a man cannot be punished for a mere intention to which no effect is attempted, yet the mere "imagining" of the death of the king is treason.

Cognitionibus mittendis. An obsolete writ which anciently was directed to a justice of the Common Pleas or other person who had taken a fine (q.v.) but had not certified it, requiring him to certify the fine.

Cognizance; Cognizee; Cognizor. See CONUSANCE; FINE; NOTICE.

Cognovit. Where the defendant in an action in the King's Bench Division of the High Court has no defence, he may give the plaintiff a written confession of the action, upon condition that he shall be allowed a certain time for the payment of the debt or damages, the amount of which is generally agreed upon. This is called a *cognovit* (*cognovit actionem*) It impliedly authorises the plaintiff's solicitor to do everything necessary to obtain judgment against the defendant if he fails to comply with the conditions on which time is given. That part of the document which contains the terms on which the defendant is to be allowed to discharge the plaintiff's claim is called the defeasance: it must be written on the same piece of paper as the *cognovit* (Debtors Act, 1869, s. 26). The *cognovit* must be attested by a solicitor, whose duty it is to inform the defendant of its nature and effect (*ib.*, s. 24), and it must be filed within twenty-one days after execution, or it will be void (*ib.*, s. 26). *Cognovits* are not of frequent occurrence since 1869, as they, like warrants of attorney (q.v.), have been in practice superseded by orders of the Court (made by consent) for the entry of judgment or for the issue of execution at a future date. Such an order is subject to the provisions as to filing which are contained in the Debtors Act, 1869, s. 26.

Before 1856 a *cognovit* given after plea was known as a *cognovit actionem relicta verificatione*.

Cohæredes sunt quasi unum corpus, propter unitatem juris quod habent (*Co. Litt* 163). (Co-heirs are regarded as one person on account of the unity of title which they possess.)

Coif was a white silk cap which serjeants-at-law were supposed to wear in Court, as "a badge that they were graduates in law": in practice it was merely a patch on the wig. See BARON OF THE COIF; EXCHEQUER; SERJEANT.

Coin. See COUNTERFEIT COIN; COPPER; GOLD AND SILVER; UTTER.

Coke. Edward Coke was born 1st February, 1551-2, called to the bar in 1578, became recorder of London, 1591-2, Solicitor-General, 1592, member and speaker of the House of Commons, 1593, Attorney-General, 1594, was knighted on the accession of James I., made chief justice of the Common Pleas, 1606, of the King's Bench, 1613; from which office he

was removed in 1616, in consequence of his resistance to the King and Court of Chancery: he was again returned to Parliament in 1621, and died on 3rd September, 1633.

His principal works are—(1) the so-called Institutes of the Laws of England, in four parts, consisting of the celebrated Commentary on Littleton's Treatise on Tenures, a commentary on many old Acts of Parliament, a treatise of Pleas of the Crown, and an account of the various courts; (2) thirteen volumes of reports; and (3) a volume of law tracts, published after his death, including the "Compleat Copyholder."

Coliberts. These were tenants, mentioned in Domesday, holding neither on a free tenure nor on a servile tenure, but on a tenure of an intermediate kind.

Collateral is, literally, that which is "by the side of," or distinct from, a certain thing. Thus, collateral consanguinity is the relationship between persons who are descended from the same ancestor (brothers, cousins, etc.), as opposed to lineal consanguinity, which exists between persons of whom one is descended from the other (father and son, grandfather and grandson, etc.). See CONSANGUINITY; DESCENT.

A collateral security is one which is given in addition to the principal security. Thus, a person who borrows money on mortgage (which is the principal security) may deposit shares with the lender as collateral security. Property comprised in a mortgage which is expressed to be collateral to another mortgage is not necessarily entitled to exoneration by the property comprised in the other mortgage. Thus, where A mortgaged to B freehold land, and also on the same day, and as part of the same transaction, mortgaged to B leaseholds as "collateral security" for the same advance, it was held that the leasehold security was not "collateral" in the sense of secondary, and that accordingly the debt was payable rateably out of the two securities, and not primarily out of the freeholds.

A collateral assurance, agreement, etc., is one which is independent of, but subordinate to, an assurance or agreement affecting the same subject-matter. Thus, where A agreed to take a lease of B's land, but finding, on examination, that it was overrun with rabbits, declined to sign the lease unless B would promise to destroy the rabbits, which B did, but no term to that effect was inserted in the lease, which provided that A should preserve the game on the land and reserved the right of sporting to B, it was held that the agreement by B to destroy the rabbits was collateral to the lease, and could, therefore, be taken advantage of by A, although it had not been inserted in the lease.

In the law of evidence, a collateral issue is a question which is not immediately or mediately a matter in dispute in the proceeding. Thus, it is not allowable to adduce evidence as to particular acts of misconduct by a witness with the view of discrediting his testimony, because that would raise a collateral issue.

In the old books, when a bond, recognisance, or the like, was entered into to secure the performance of some act, such as to execute a conveyance, build a house, etc., it was called a bond to do a collateral act, as opposed to a bond for the payment of money, apparently because in the latter case the act and the penalty are both of the same nature.

As to collateral warranty, see WARRANTY.

Collaterates et socii. An ancient title of masters in the Court of Chancery.

Collatio bonorum. In the Roman law this corresponded to what is known in our law as bringing into Hotchpot (q.v.).

Collation is the ceremony by which a bishop admits and institutes a clerk to a church or benefice in his (the bishop's) own gift, whether as patron or by lapse (q.v.): it is equivalent to the two acts of presentation and institution, which are necessary in cases where the patron and the bishop are different persons. Where the benefice is in the bishop's own gift, it is sometimes called a collative advowson. See ADVOWSON.

Collation of Seals. In ecclesiastical law, this anciently took place when, on the same libel (q.v.), one seal was set upon the reverse of another seal.

Collatione facta uni post mortem alterius. A writ anciently issued to the justices of the Common Pleas commanding them to issue another writ to a bishop directing him to admit a certain clerk (q.v.) to a benefice in the place of another who had been presented by the king but who had died before admittance.

Collatione heremitagii. A writ whereby the king anciently gave to a clerk (q.v.) the keeping of a hermitage.

Collative Advowson. See ADVOWSON.

Collecting Societies. A collecting society is a friendly society (q.v.) or branch, whether registered or unregistered, which receives contributions by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the society. This definition is contained in s. 1

of the Collecting Societies and Industrial Insurance Companies Act, 1896, to which reference should be made for further information regarding such societies.

Collective Title. Between 1829 and 1912 twenty-three Acts dealing with the police of the Metropolis were passed. Apart from special statutory provision, the only accurate way in which all these Acts could be referred to in another Act or in a legal document would be by setting out the short title (q.v.) which each of them has either under the Short Titles Act, 1896, or under a section contained in every one of them which was passed after 1896. But the whole group can now be properly referred to for all purposes as the Metropolitan Police Acts, 1829 to 1912, by force of the Short Titles Act, 1896—which gave the first sixteen of them the collective title of the Metropolitan Police Acts, 1829 to 1895—and by force of provisions contained in such of them as were passed after 1896.

This system of collective titles had been adopted as regards many groups of Acts before 1892. It was applied by the Short Titles Acts, 1892 and 1896, to many other groups which up to then had no collective title. Each latest Act of a group of Acts now invariably gives a collective title to the whole group. Such collective titles are only for convenience in citation: they do not mean that all the Acts of a group are to be construed as one.

Collective Works. See the Copyright Act, 1911, s. 35.

College. A college "always supposeth a corporation," said Holt, C.J., in *Philips* v. *Bury* (1694), 2 T. R. 353. That is still the law. Schools and various educational institutions frequently describe themselves as colleges: but that does not in law make them colleges unless they are in fact incorporated.

A college is a corporation created for the promotion of learning and, in many cases, for the support of persons who devote themselves to learning. The colleges which make up the universities of Oxford and Cambridge, the colleges of Eton and Winchester, and bodies created for professional purposes, such as the Royal College of Physicians and Surgeons, and the College of Heralds, are what are known to the law as colleges. All of them are incorporated. Those of them—such, for instance, as the colleges of Oxford and Cambridge—which exist for, amongst other purposes, the support of persons who devote themselves to learning are charitable corporations. See CHARITIES.

A college may be created by royal charter, which is the most usual method of incorporation, or by persons acting under royal licence or under the Companies Act, 1908, ss. 17, 19, 20.

College of Arms. See HERALDS.

Collegiate Body. This is a synonym of college (q.v.).

Collegiate Church; Collegiate Chapter. A collegiate church is one built and endowed for a society or body corporate, consisting of a college or chapter with a dean, or president and canons, or prebendaries. Before the Reformation there were many of these bodies, all consisting of secular clergy as distinguished from clergy belonging to the religious orders. Those now existing are Westminster, Windsor, Wolverhampton, Heytesbury, Southwell and Middleham.

Colligenda bona. See GRANT.

Collision. Cases of damage caused by the collision of ships form an important part of the Admiralty jurisdiction of the High Court and County Courts. These cases are subject to peculiar rules, regulating the liability of the respective vessels and their owners, and the procedure to be adopted. Thus, if the collision is caused by the negligence of both vessels, each is liable to make good the loss or damage in proportion to the degree in which she was in fault (Maritime Conventions Act, 1911, s. 1), and the liability of each vessel is limited according to its size (Merchant Shipping Act, 1894, s. 503). If two vessels, A and B, come into collision, both being equally to blame, causing loss or injury to A to the extent of £500, and to B to the extent of £1,000, half the loss of A would be deducted from half the loss of B so that A would pay B £250, while if A was in fault to the extent of 80 per cent., she would be liable for 80 per cent. of the damage to the extent of £1,000 suffered by B—that is to say, A would be liable for £800—and B would be liable for only 20 per cent. of the damage to the extent of £500 suffered by A—that is to say, B would be liable for £100—so that A would pay B £700. See PRELIMINARY ACTS; LIMITATION OF LIABILITY.

Colloquium, in the old common law pleading in cases of slander, was that part of the declaration which alleged that the words complained of were spoken of and concerning the plaintiff, or of and concerning the plaintiff in the way of his trade and profession.

Collusion is where two persons, apparently in a hostile position, or having conflicting interests, by arrangement do some act in order to injure a third person or deceive a

Court. Thus, where a person brings an action for penalties against a company by arrangement with them, for the purpose of protecting them against other actions by hostile persons for the same penalties, the judgment is held to have been obtained by collusion. The effect of collusion is to vitiate the transaction in which it is employed.

A person taking interpleader proceedings for his own protection is bound to make an affidavit that there is no collusion between him and either of the adverse claimants (R. S. C., Ord 57, r. 2 (*b*)).

In suits for dissolution of marriage, collusion was formerly used in the sense of connivance and conspiracy to commit the offence complained of; but it now means a conspiracy in presenting or prosecuting the petition in the suit, as where the respondent agrees with the petitioner to assist in obtaining a decree. Collusion is a bar to such a suit. See INTERVENTION.

Colonial Governors. Under the statute 11 & 12 Wm. 3, c. 12, governors guilty of oppression, or other crimes or offences in their colonies, may be tried in the King's Bench or by special commission; and they may be sued in the courts of their own colony or dependency in respect of matters, such as private debts, not relating to their office. But they or any other governors are not liable in the courts of their own government for any acts done by them in their capacity of governors; and *à fortiori*, they are not liable in such cases where the legislature of the colony has passed an Act of indemnity. See ACT OF STATE.

Colonial Law. The Fugitive Offenders Act, 1881, provides for the apprehension of offenders within the United Kingdom escaping to the colonies, and *vice versâ*, and for their being sent for trial to the jurisdiction within which the offence was committed; and the Admiralty Offences (Colonial) Act, 1849, provides for the trial in the colonial courts of offenders upon the seas afterwards coming within the colonial jurisdiction; and the Courts (Colonial) Jurisdiction Act, 1874, provides for the punishment that may be inflicted on conviction.

Colonial Office. The Government department of which the Secretary of State for the Colonies is the head. See SECRETARY OF STATE.

Colonies. As a general rule, a colony acquired by discovery and occupation is to be governed by the laws of England; and if acquired by conquest, or by cession, then by its own laws, so far as they are not contrary to morality, and until this country sees fit to change them. But when the laws of England depend upon circumstances that are peculiar to England, and which do not apply to the colonies also, then these particular laws of England do not hold good even in colonies acquired by discovery or occupation, *e.g.*, the law of mortmain has been held not to apply in the island of Grenada; and the law (now abolished) against aliens holding real property was held not to apply in India. The Crown may in the case of colonies acquired by conquest or cession grant them legislative assemblies; and in the case of colonies acquired by discovery or occupancy, it may sanction the constitution of local representative legislatures. And thereafter the Crown's power of legislation is at an end, as regards colonies of all kinds, which are thereafter governed by the acts of their own legislatures in conjunction with and subject to the acts of the Imperial legislature; but only such acts of the Imperial legislature extend to the colonies as expressly, or by reasonable implication, are intended so to do.

The Colonial Laws Validity Act, 1865, provides that any colonial law that is repugnant or contrary to any Act of Parliament extending to the particular colony, or that is repugnant or contrary to any order made under the authority of the Act, is to be read subject to such Act or order, and is to be void to the extent of the repugnancy.

Colorado Beetle. The Destructive Insects Act, 1877, and the orders made thereunder, provide for the destruction and for the exclusion from the country of the insect known as the Colorado Beetle, which shortly before the passing of that Act had come into this country from America and had done much injury to crops.

Colour. Colour primarily signifies any appearance, pretext or pretence: thus, a person is said to have no colour of title when he has not even a *primâ facie* title.

Colour was formerly an important term in the language of pleading, but is now obsolete. It signified an apparent or *primâ facie* right, and the meaning of the rule that pleadings in confession and avoidance should give colour was that they should confess the matter adversely alleged to such an extent at least as to admit some apparent right in the opposite party, which required to be encountered and avoided (*i.e.* deprived of its effect) by the allegation of new matter. Colour was either implied or express.

Implied colour was as follows: Where, for instance, to an action of assumpsit the defen-

dant pleaded in confession and avoidance that he did not promise within six years before the action brought, it was an absolute implied admission of the truth of the adverse allegation, that he had at one time made such promise as alleged, and that there was therefore an apparent right in the plaintiff and this right was avoided by relying on the lapse of time. Express colour (called in the old books " colour " simply) was a feigned matter, pleaded by the defendant in an action of trespass, from which the plaintiff seemed to have a good cause of action, whereas he had in truth only an appearance or colour of cause. Thus, if the defendant in an action of trespass *quare clausum fregit* wished to defend himself upon the ground that J. S., a third person, being seised in fee of the land in question, had demised it to him for a term of years, he was not allowed to plead those facts simply, because they would amount to a denial of any title to possession whatever in the plaintiff, and for such a denial a traverse (q.v.) was the proper plea; but as it was frequently advantageous for the defendant to set forth such facts in his plea, the old pleaders devised the expedient of inserting in the plea a fictitious allegation of some colourable but insufficient title in the plaintiff, which they at the same time avoided by the preferable title of the defendant. Thus, in the action of trespass above, the defendant would plead the demise by J. S. to himself, and proceed to aver that the plaintiff claimed under another demise from J. S., and that it was inoperative; this was called " giving colour," because it supplied the want of implied colour.

Express colour was abolished by the Common Law Procedure Act, 1852, s. 64: implied colour, which had been known to the law for over five hundred years, disappeared when the Judicature Act, 1873, came into force.

Colourable is that which is in appearance only and not in substance what it purports to be.

Thus, where a person took a house, for which he paid rates and taxes, in a parish for the purpose of obtaining a qualification for certain privileges given to the parishioners of that parish, it was held that his qualification was good and not colourable; but that if he had not really taken the house, but had only got somebody to put up his name over the door, or something of that kind, then it would have been colourable and a sham.

Colourable imitation, as applied to trade marks (q.v.), is such a close or ingenious imitation as to be calculated to deceive ordinary persons. See also COPYRIGHT; PATENTS.

Combarones. Anciently this meant the Fellow Barons or Freemen of the Cinque Ports. In the eighteenth century a Baron of the Cinque Ports had come to mean a representative in Parliament of one of those ports, and combarons had come to mean the representatives generally of those ports in Parliament. See BARON.

Combat, Trial by. See BATTLE, TRIAL BY.

Combination of Workmen. At common law all combinations of workmen for the purpose of raising the rate of wages were unlawful, as being in restraint of trade and were held to be conspiracies. This rule has long, however, ceased to prevail. The repealed statute 22 Vict. c. 34, enacted in explanation of the earlier statute 6 Geo. 4, c. 129 (since repealed), that no workman, by reason merely of his combining with other workmen for the purpose of fixing the rate of wages, or for the purpose of peaceably and without threat or intimidation dissuading others from working with a view to fixing the rate of wages, should be deemed or taken to be guilty of the offence of molestation or obstruction; but the Act was not to authorise a workman to break his contract. The Trade Union Act, 1871, was a legal recognition of trade unions conducted on a similar principle; the Conspiracy and Protection of Property Act, 1875, and the common law as to conspiracy left in force by the enactments mentioned above, provided means of dealing with abuses by trade unions of the power which they possessed; but when this restraint upon their action was fully realised, the Trade Disputes Act, 1906, was passed in order (1) to free members of trade unions from civil liability for what was at common law an actionable conspiracy until then; (2) to absolutely prohibit actions of tort against trade unions; and (3) to legalise the form of intimidation known as peaceful picketing.

Combustio pecuniæ. What is now called assaying (see ASSAY) was anciently known as *combustio pecuniæ*, or melting down of money.

Comitatu commisso. An obsolete writ or commission to act in the office of sheriff.

Comitatu et castro commisso. A still older commission, not merely to act as sheriff, but also to take over charge of a castle.

Comitatus. A county.

Comity. The comity of nations (*comitas gentium*) is that body of rules which States observe toward one another from courtesy or

mutual convenience, although they do not form part of international law.

Commander-in-Chief. Until 1793 the army was under the personal command of the King, his orders being given through the Secretary at War. In 1793 the office of Commander-in-Chief was created by patent, and thenceforward military appointments and promotions were in the hands of the Commander-in-Chief. The office of Commander had been created in order to remove the army from political influences: but after 1854 there was a system of dual control of the army by the Commander-in-Chief and the then newly created Secretary of State for War; and after 1870 the Commander-in-Chief became completely subordinate to the Secretary of State for War, who is the minister now responsible to Parliament for all matters connected with the army. In 1904 the office of Commander-in-Chief was abolished, his duties being divided between the Army Council (q.v.) and the Inspector-General of the Forces (q.v.).

Commandery. Anciently this meant a benefice held in commendam (q.v.).

It also means a manor or group of manors held by the Order of the Knights of St. John of Jerusalem, otherwise known as the Knights Hospitaller. All commanderies were forfeited to the Crown by the statute 32 Hen. 8, c. 20.

Commandite; Commanditaire. A *société en commandite* in French law is a partnership of which some of the members (the *associés commanditaires*) are mere lenders of capital to the firm, and are not responsible for any losses beyond the amount of their capital. The principle was introduced into English law by s. 1 of the Partnership Act, 1865 (commonly called Bovill's Act), and by s. 2 of the Partnership Act, 1890, which repealed and replaced Bovill's Act; and in mercantile language a persons who advanced money to a partnership under those Acts was called a *commanditaire*, but there were few such persons. An attempt had also been made by s. 4 of the Companies Act, 1867 (repealed by the Companies Act, 1908, s. 286, Sch. 6 (Pt. I.)), to apply what the legislature believed to be the principle of *sociétés en commandite* to English companies, but without success. (See COMPANY.) The Limited Partnerships Act, 1907, made the English law as to partnership very much the same as that existing in France under the *sociétés en commandite*; but partnerships under that Act have never been popular, a private company being found in general more satisfactory. See PARTNERSHIP; COMPANY.

Commendam is a benefice or ecclesiastical living which, being void, or to prevent its becoming void, is committed (*commendatur*) to the charge and care of some sufficient clerk, to be supplied until it may be conveniently provided of a pastor. Thus, formerly when a parson of a parish was made the bishop of a diocese, there was a cession of his benefice; but if the king gave him power to retain his benefice, he continued parson thereof, and was said to hold it in commendam. This was called a commendam *retinere*, as opposed to a commendam *capere*, which was where power was given to take a benefice in addition to one which the incumbent already had. Commendams were also divided with reference to their duration into *semestris* (six months), *perpetua* (for life), and *limitata* (temporary). Commendams were practically abolished by the Ecclesiastical Commissioners Act, 1836, s. 18, and the modern Acts against pluralities, except in the rare instances in which pluralities (q.v.) are still allowed.

Commendation, in feudal law, was where an owner of land placed himself and his land under the protection of a lord, so as to constitute himself a vassal or feudal tenant, Commendation, and the grant of *beneficia* or feuds, were the two principal modes by which the feudal system was established.

Commendatory. One who holds a church living in commendam (q.v.).

Letters commendatory meant letters of introduction, more especially when given by a bishop to one of his clergy travelling outside his diocese.

The commendatory prayer is the prayer by which the Anglican Church commends to the mercy of God a person at the point of death.

Commendatus. One who had commended himself to a lord. See COMMENDATION.

Commercial Cause. "Commercial causes include causes arising out of the ordinary transactions of merchants and traders; and amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking and mercantile agency and mercantile usages." See the *Annual Practice* (1922), Pt. II., p. 2369. Such causes are transferred into what is known as the Commercial List, and in London, Liverpool and Manchester are tried in a simple and expeditious manner (*ib.*, pp. 23, 68-71). An action becomes a commercial cause if a judge upon the hearing of the summons for directions (q.v.) transfers it to the list of commercial causes. This puts a stop to pleadings in the ordinary sense; but the judge at the same time can order the delivery of

" points of claim " (see STATEMENT OF CLAIM), and " points of defence " (see STATEMENT OF DEFENCE). Discovery by interrogatories and particulars is not, however, allowed. Anything in the shape of pleadings is in fact discouraged; and as each of the parties in these causes generally knows perfectly well the case which the other party proposes to make, they, under Ord. 34, r. 9, frequently go to trial without any substitute for pleadings.

Commercial Court. The court in which since 1895 commercial causes (q.v.) are heard is popularly known as the Commercial Court (*Annual Practice* (1922), Pt. II., p. 2368). There is, however, no court known to the law by that name. The Commercial Court is merely the result of the action of the judges in applying the existing Rules of Court in such a way as to provide a very satisfactory machine for disposing of commercial causes.

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum (3 *Inst.* 56). (Commerce, by the law of nations, ought to be open to all, and not converted to monopoly and the private gain of a few.)

Commissary. This is an ecclesiastical officer who exercises jurisdiction in places of the diocese so far from the chief city that the chancellor cannot call the people to the bishop's principal consistory court without great trouble to them. See DIOCESAN COURTS.

Commissary Court. The ecclesiastical court of the diocese of Canterbury which corresponds to the consistory court (q.v.) of every other diocese. The jurisdiction of the Archbishop, as metropolitan, is exercised in the Court of Arches (q.v.) and not in his commissary court .

Commission. This is an order or authority to do some act.

In the law of contracts and agency, a commission is an authority to an agent to enter into a contract, especially one for the sale or purchase of goods: such a commission generally includes an engagement by the principal to remunerate the agent, and hence " commission " is sometimes used to denote the remuneration paid to an agent.

A *del credere* commission is an authority to an agent to negotiate sales of goods on behalf of his principal, the latter engaging to pay him a higher remuneration than usual in consideration of his guaranteeing the payment of the price by the persons to whom he may sell them.

Commission also signifies an authority given by the Crown, a Court, or the like, to a person or persons to do some act, especially to inquire into certain facts. When the commission creates a permanent office it is generally known by the description of the commissioners—such as the Ecclesiastical Commissioners, the Charity Commissioners, Railway Commissioners, etc. (See the various titles.) The following commissions are or were of a temporary nature:—

ADJUNCTS. See DELEGATES.

ANTICIPATION. Thus was a commission under the Great Seal to collect a tax or subsidy before it actually became due. Such commissions were, of course, illegal: when they were issued during the reign of Henry VIII there was little inclination to question the legality of anything done by the Crown, but during the Stuart period such commissions ceased to be issued. Now that power has passed from the Crown to the House of Commons, it is interesting to note that the House of Commons has imitated the methods of Henry VIII. It had been customary for many years before 1912 for the Ways and Means Committee of the House to pass a resolution assenting to certain taxes and for the tax-collecting authorities then to proceed to collect those taxes as if they had actually been imposed by an Act of Parliament. Such a course of procedure was manifestly illegal. It was declared to be illegal in 1913, whereupon the Provisional Collection of Taxes Act, 1913, was passed to give legal effect to the resolution of the House pending the passing of the bill imposing the taxes.

APPRAISEMENT AND SALE. Where property has been arrested in an Admiralty action *in rem* and ordered by the Court to be sold, the order is carried out by a commission of appraisement and sale; in some cases (as where the property is to be released on bail and the value is disputed) a commission of appraisement only is required. The commission of appraisement is directed to the marshal and commands him to reduce into writing an inventory of the property, to choose one or more experienced persons, to swear them to appraise the property according to its true value, and to file a certificate of the value signed by himself and the appraisers. The commission of sale (which is generally added to the commission of appraisement, though it may be separate) commands the marshal to sell the property by public auction for not less than the appraised price and to pay the proceeds into the registry (see Williams & Bruce (ed. 1902), pp. 313-320).

ARRAY. See ARRAY, COMMISSION OF.

ASSIZE. Commissions of assize are those issued to judges of the High Court or Court of Appeal, or to King's counsel, authorising them to sit at the assizes for the trial of civil actions. See ASSIZE; NISI PRIUS.

ASSOCIATION. This was a commission issued during the reign of Elizabeth to associate two or more learned persons with judges going circuit in Wales.

CHARITABLE USES. A commission issued out of Chancery to a bishop or other person to enquire into the application of the revenues of lands which had been given for charitable uses. See the statute 43 Eliz. c. 4.

DELEGATES. See that title.

EXAMINATION OF WITNESSES. When a persons whose evidence is required in a cause is out of the jurisdiction, or when his attendance in court ought for any sufficient cause to be dispensed with, a commission may be issued authorising a person or persons therein named to take his evidence on oath either by interrogatories or *viva voce*, or by both methods, and the depositions are read at the trial (R. S. C., Ord. 37, rr. 1, 5). See also EXAMINER; MANDAMUS; LETTERS OF REQUEST. When a cause has been referred to arbitration under the Arbitration Act, 1889, s. 15, the referee may make an order for the examination by a commissioner of witnesses who are abroad.

The County Court can make an order for the examination of any witness at any place in England or Wales before any person named in the order (County Court Rules, r. 18); but if the proposed place of examination is elsewhere, then an application must be made to the High Court (*ib.*, r 33)

EYRE. See that title

GAOL DELIVERY. See that title.

LUNACY. Commissions in lunacy are issued under the Great Seal. Before the Lunacy Regulation Act, 1853, a special separate commission, called a "commission in the nature of a writ *de lunatico inquirendo*," was issued in each case of alleged lunacy, requiring the person to whom it was directed to inquire concerning the state of mind of the alleged lunatic and to certify the result by inquisition (q.v.); but it was provided by the above Act (s. 39) that a general commission might be issued, directed to the Masters in Lunacy by name, and authorising them to enquire in each case of alleged lunacy referred to them by the Lord Chancellor in the same manner as if a commission had issued specially in the case; this superseded special commissions. The Lunacy Regulation Act, 1853, was repealed by the Lunacy Act, 1890, s. 342, but s. 112 of the latter Act reproduces s. 39 of the Act of 1853. (See MASTERS IN LUNACY.) As to the permanent Commissioners in Lunacy, see that title.

OYER AND TERMINER. See that title.

PARTITION. Formerly a partition was effected by issuing a commission to commissioners to divide the property, and on their return coming in the parties were ordered to execute mutual conveyances to carry out the division. See PARTITION.

PEACE. A commission of the peace is one by which the Crown appoints (or technically "assigns") a number of persons to act as justices of the peace (q.v.) within a certain district. The commission to county justices which was in use from 1590 to 1878 contained two assignments or appointments; by the first, the general power of preserving the peace was given to the justices jointly and severally; by the second, power to hold sessions (q.v.) was given to all the justices and to every two or more of them, of whom (in the original Latin *quorum*) one of certain named justices must be one. In more recent times it became the rule to name all the justices in the *quorum* clause, which therefore became nugatory. There is no reference to the *quorum* in the commission which has been used for counties since 1878. This new form was prescribed by rules (made under the Crown Office Act, 1877) which are to be found in the Statutory Rules and Orders Revised (ed. 1904), Vol. ii., "Clerk of the Crown in Chancery." Except as regards the *quorum* clause, it is substantially the same as the old form.

Before 1835 no commission of the peace was issued except for a county; and justices in boroughs derived their jurisdiction from prescription or charter. In the City of London, the Lord Mayor and aldermen still act as justices by prescription. But as regards all other boroughs, the Municipal Corporations Act, 1835, s. 107, abolished justices by prescription or charter, and s. 98 of the same Act provided for borough commissions of the peace. That Act was repealed and replaced by the Municipal Corporations Act, 1882, s. 5, and borough commissions of the peace are now issued under s. 156 of the Act of 1882. The form now in use is to be found in the rules which set out the form for counties. In the form for boroughs the first of the assignments used for counties is also used; but the second assignment is omitted, as borough justices may not act at any court of gaol delivery or quarter sessions (Municipal Corporations Act, 1882, s. 158 (1)).

No commission of the peace is now affected by a demise of the Crown (Demise of the Crown Act, 1901, s. 1 (1)).

REBELLION. A commission of rebellion was the old method of compelling a defendant to a suit in Chancery to appear and answer the bill: it authorised the commissioners to attach, *i.e.* arrest him. The process was abolished in 1841.

REVIEW. A commission of review was occasionally issued to revise the sentence of the Court of Delegates. See DELEGATES.

SEWERS. See SEWER.

TRAILBASTON. See that title.

UNLIVERY. In an action in the Admiralty Division, where it is necessary to have the cargo in a ship unladen in order to have it appraised, a commission of unlivery is issued and executed by the marshal (see Williams & Bruce (ed. 1902), pp. 314-6).

WAR, TO TAKE UP MEN FOR. A commission formerly issued to press or force men into the king's service.

Commission-day is the opening day of the assizes at a particular town. See ASSIZE.

Commissioner means a person to whom a commission is directed by the Crown, or a Court, etc. The most important classes of commissioners, however, are those holding permanent offices. Amongst them are the following:—

Commissioners for Oaths are solicitors and other fit persons appointed by the Lord Chancellor to administer oaths (including affirmations and declarations) to persons coming before them (Commissioners for Oaths Act, 1889, ss. 1, 11) Formerly, when they were concerned only with affidavits, they were appointed under various Acts of Parliament according to the Court in which the affidavit was to be used; but since 1st November, 1875, all such commissioners can administer oaths in all causes and matters pending in the Supreme Court (Judicature Act, 1873, s. 82), and all commissioners for this purpose are appointed by the Lord Chancellor under the Judicature Act (*ib.*, s 84). Commissioners for taking oaths in the Supreme Court may also take oaths in the ecclesiastical courts (Commissioners for Oaths Act, 1889, s. 1 (2)). A commissioner must not administer an oath to a person for whom he is acting as solicitor (*ib.*, s. 1 (3)). The Lord Chancellor may revoke any commission (*ib.*, s. 1 (1)); and this power applies to commissions granted before 1875.

The practice of the Lord Chancellor is to appoint only a solicitor who has been in continuous practice for six years, where such a solicitor is available; but in remote districts where such a solicitor cannot be found, a solicitor not coming within that description or some "other fit person" is occasionally appointed. The commission is in force only while the person appointed, if a solicitor, practises as such.

A commissioner is entitled to a fee of one shilling and sixpence for every oath, declaration, affirmation, or attestation, sworn, etc., before him, and to a further fee of one shilling for each exhibit (q.v.).

Any statutory declaration (q.v.) may be made either before a commissioner or (Statutory Declarations Act, 1835, s. 18) before a justice of the peace. The justice charges no fee. An affidavit cannot, however, be sworn or affirmed before a justice.

Commissioners for Taking Acknowledgments of Married Women are either special, that is, appointed for taking the acknowledgment in a particular case (as where the married woman is abroad), or perpetual (Fines and Recoveries Act, 1833, ss. 81, 83). See ACKNOWLEDGMENT OF DEEDS.

Commissioners in Bankruptcy. Formerly the jurisdiction over bankrupts' persons and estates was exercised by commissioners appointed by a commission issued by the Lord Chancellor under the Great Seal in each case; the Lord Chancellor exercising superintendence over the proceedings. By the statute 1 & 2 Will. 4, c. 56, a court of bankruptcy consisting of four judges (exercising as a Court of Review the jurisdiction previously exercised by the Lord Chancellor) and six commissioners (who were permanent officials) was constituted; country commissioners were also appointed for time to time The proceedings in each case were commenced by a *fiat*, called a London or a country *fiat* according to circumstances, and issued out of Chancery, instead of by a commission. Under the statute 5 & 6 Vict. c. 122, permanent district commissioners, attached to districts courts in the country, were appointed. Commissioners in bankruptcy were abolished by the Bankruptcy Act, 1869, ss 128, 130.

Commissioners in Lunacy. The original Commissioners in Lunacy were two in number, appointed by the Lord Chancellor under the now repealed statute 5 & 6 Vict. c. 84, ss. 1, 3, 13, 14, in order that commissions in lunacy (see COMMISSION—LUNACY) might be addressed to them. Under the repealed Lunacy Act, 1845, s. 2, they became Masters in Lunacy (q.v.), and the same Act, by s. 3, authorised the appointment by the Lord Chancellor of

eleven new officials, to be known as Commissioners in Lunacy, three to be barristers and three to be physicians, the barristers and physicians to be salaried officials. The Lunacy Act, 1890, s. 150, enacted that there should continue to be Commissioners in Lunacy. The Lunacy Act, 1911, s. 3, authorised the appointment of two more paid Commissioners in Lunacy. The Mental Deficiency Act, 1913, s. 22, provided for fifteen commissioners in all, of whom twelve are paid; of the paid commissioners, four must have been practising barristers or solicitors of at least five years' standing, four must have been duly qualified medical practitioners of at least five years' standing; one at least of the unpaid and one at least of the paid commissioners must be a woman. The whole fifteen constitute the Board of Control (q.v.); and the Act further provides that the existing Commissioners in Lunacy should be members of the board.

Commissioners of Customs and Excise. The department which collects the customs and excise duties. They were originally the Commissioners of Customs, but by Order in Council dated 15th February, 1909, made pursuant to s. 4 of the Finance Act, 1908, the management of the excise was transferred to them, and they are now the Commissioners of Customs and Excise.

Commissioners of Inland Revenue collect the internal taxes (as opposed to the customs duties), such as the land tax, the house tax, the income tax, duties imposed in respect of the passing of property on death, and stamp duties (q.v.); but excise as well as customs duties are managed by the Commissioners of Custom and Excise. The Commissioners of Inland Revenue are the result of the consolidation, in 1849, of the Commissioners of Stamps and Taxes with the Commissioners of Excise. There are at present four Commissioners of Inland Revenue; they are appointed by letters patent under the Great Seal, and hold office during the pleasure of the Crown (Inland Revenue Regulation Act, 1890, s. 1 (1)). Their offices are in Somerset House.

Commissioners of Patents. These were officers of a *quasi*-judicial character, acting under the repealed Patent Law Amendment Act, 1853, whose duty it was to investigate applications for patents, prepare letters patent, and issue warrants for having the letters patent sealed with the Great Seal, and keep the register of patents and assignments. Under the Trade Marks Registration Act, 1875 (now also repealed), they had the superintendence of the registry of trade marks.

They are now represented by the Comptroller-General of Patents, Designs and Trade Marks, as to whom, see s. 63 of the Patents and Designs Act, 1917.

Commissioners of Sewers. See SEWERS.

Commissioners of Woods, etc. The Commissioners of Woods, Forests and Land Revenues, and of Works and Public Buildings, are two boards appointed for the superintendence of the public property indicated by their titles. It includes the royal parks in and near London and the other royal demesnes given up by the Crown on the settlement of the Civil List. See CIVIL LIST; DEMESNE.

Commissioners Rogatory. Commissions by which evidence is collected for courts of one country by means of courts of another country. They are now largely superseded by Letters of Request (q.v.).

Commit; Commitment; Committal. A person is committed to prison when he is sent there by a court or judge, generally for a short period or for a temporary purpose.

In criminal law, when a person is accused of an offence triable only on indictment, the magistrate before whom he is examined, after hearing the evidence of witnesses, is bound either to discharge the accused or to commit him to prison to take his trial (commonly called committing him for trial), unless it is a bailable offence, in which case he may be admitted to bail (q.v.). This imprisonment is only for safe custody and not for punishment. The next step is the indictment (q.v.).

In civil proceedings, the principal instances of committal are those for punishment of contempt of Court (see CONTEMPT), and for non-payment of a judgment debt under the Debtors Act, 1869. Section 5 of that Act provides that any court may commit to prison for not more than six weeks any person making default in payment of a judgment debt if it is proved that he has, or since the date of the judgment has had, means to pay. This jurisdiction is exercised chiefly by the County Courts; in the High Court it is now exercised by the judge in bankruptcy (Bankruptcy Act, 1914, s. 107; Bankruptcy Rules, 1915, rr. 374-380).

Committee. In lunacy (q.v.) practice, a committee is a person to whom the custody of the person or the estate of a lunatic is committed or granted by the Lord Chancellor. The same person may be committee of the person and of the estate, or the two offices may be vested in two different persons, or either office may be vested in two or more persons, called joint committees. The com-

mittee represents the lunatic, but acts under the direction of the Master, Lords, Justices or Lord Chancellor having jurisdiction in the matter, in much the same manner as the guardians and trustees or executors act in an administration suit, the committee of the person being responsible for the comfort and well-being of the lunatic, and the committee of the estate being responsible for its proper management. As to the powers of the committee of the estate, see the Lunacy Act, 1890, s 120.

In parliamentary practice a committee is a sitting of one of the Houses of Parliament or of a number of its members for considering questions of detail; hence committees are distinguished as "committees of the whole House," and "select committees," consisting of certain members appointed by the House to inquire into and report on a particular matter for the information of the House, especially such matters as involve the examination of witnesses; *e.g.* a private bill or an inquiry into an aleged public abuse, or the like.

The principal function of committees of the whole House is to consider bills which have been read a second time and to amend them where necessary. In the House of Commons two committees of the whole House also sit at intervals throughout the session, one (called the Committee of Supply) for the purpose of considering how much money is required for the public expenditure, the other (called the Committee of Ways and Means) for providing that money by sanctioning the imposition of taxes and the application of public revenues. The recommendations of the latter are carried into effect by the Annual Appropriation Act. See APPROPRIATION.

There are also committees, called standing committees, nominated every session for purposes of parliamentary business, *e.g.* the Committee of Selection, appointed by the House of Commons to classify private bills and arrange for their consideration by select committees. A bill is sometimes referred to what is called a hybrid committee, consisting partly of members nominated by the House and partly of members nominated by the Committee of Selection. See BILL.

See also PRIVILEGES, COMMITTEE OF; JOINT COMMITTEE.

Committee of Adjustment. The regulations made 30th August, 1903, under the Regimental Debts Act, 1893, direct that the Committee of Adjustment referred to in that Act shall consist of three officers, and that, where practicable, the president of the committee shall not be below the rank of captain, or, where the deceased was an officer, below the rank of major. See REGIMENTAL DEBTS.

Committee of Inspection. At the first or any subsequent meeting (q.v.) of creditors, after a receiving order has been made, the creditors may appoint a committee, consisting of not more than five or less than three persons, each of whom is a creditor or the holder of a general proxy or of a general power of attorney from a creditor, for the purpose of superintending the administration of the bankrupt's property by the trustee (Bankruptcy, Act, 1914, s. 20 (1) (2)). The trustee can do certain things, such as mortgaging the bankrupt's property in order to pay debts, only with the consent of the committee (Bankruptcy Rules, 1915, r. 56), and is to have regard to its directions, but the creditors in general meeting may override such directions (Act of 1914, s. 79 (1)). Where the property is not likely to exceed £300 in value there is to be no committee of inspection (s. 129).

A committee of inspection may also be appointed by the creditors and contributories of a company which is being wound up (Companies (Consolidation) Act, 1908, s. 160 (1)); and if none be appointed, the Board of Trade may act as such (s. 160 (3)). See INSPECTOR.

Committitur Piece. An instrument written on parchment which up to 1869 was used for the purpose of charging a person already in the Queen's Bench Prison or, after 1862, in Holloway Prison, in execution at the suit of the same plaintiff who had caused his arrest for debt. Obsolete since the virtual abolition of arrest for debt by the Debtors Act, 1869.

Commixture. See CONFUSIO.

Commodatum. See BAILMENT.

Commodum ex injuria non oritur (4 *Bing.* 639). (No advantage [in law] arises out of a wrong.) Compare *Jus ex injuria, etc.*

Common. In the technical sense of the words, a common (or right of common) is the right of taking some part of any natural product of the land or water belonging to another man in common with him. Therefore, the right to take the whole of the product, or to exclude the owner from taking it, is not a common—though sometimes called a sole common—but an estate in land: "for it is against the nature of this word common; and it was implyed in the first grant that the owner of the soyle should take his reasonable profit there" (*Co. Litt.* 122a). Hence, also, a right of common cannot be claimed by custom, because, the number of claimants

under a custom being indefinite, the subject of the right would be liable to be entirely destroyed. The only exception to this rule occurs in the case of copyholders, who may claim a right of common against their lord by virtue of a custom in the manor. The reason of this is, that copyholders are but tenants at will to their lord, and therefore cannot claim by prescription except in his name; as they could not claim a right in his name against himself, they would not be able to claim at all if they were not allowed to claim under a custom. Most rights of common may be created by grant at the present day, or may be claimed by prescription. See APPENDANT; LOST GRANT; PRESCRIPTION.

A common is an incorporeal hereditament, and a species of profit *à prendre*. See HEREDITAMENT; PROFIT.

A person having a right of common is called a commoner. See COMMONABLE.

Commons are of four principal kinds, viz., common of pasture, of estovers, of turbary, of piscary; the remaining rights are generally classed together as miscellaneous.

Common of pasture is the right of feeding one's beasts upon another's land; the most usual instances of this are: the right of the tenants of a manor to pasture their beasts on the waste, woodland, etc., of the manor; the right of pasture over royal forests possessed by persons owning land within the forest: and the reciprocal rights of pasture possessed by owners of shack-lands, lammas-lands, lot-meadows, etc. (*infra* and COMMONABLE). But any owner of land in fee simple may grant to another person the right of pasturing animals on his land, and the right of common so created may be either appurtenant or in gross.

Common of pasture is either appendant, appurtenant, because of vicinage, or in gross. Common at large is the same as common in gross. Common of pasture appendant is the right which every freehold tenant of a manor possesses to feed his cattle used in agriculture (*i.e.* horses, cattle and sheep) upon the lord's waste, provided they are levant and couchant on the tenant's freehold land. It is said to exist "of common right," because (as it is usually put) on every original feoffment of arable land to be held of the manor in socage, the law, without express words, presumed a grant of sufficient pasture in the waste for the beasts levant and couchant on the land. The more correct view appears to be that the right of common appendant is traceable to the village communities or vills which existed in England at the time of the Conquest. The right of common appendant cannot be created since the statute of Quia Emptores, 18 Edw. 1, st. 1, c. 1, that statute having prohibited the creation of new manors; and the land to which such a right is appendant must originally have been arable. See APPENDANT; LEVANT AND COUCHANT.

Common of pasture appurtenant is a right annexed to certain lands, by virtue of which the owner of those lands feeds cattle on the soil of another person; it differs from the right of common appendant (*supra*) in all the characteristics which arise from the connection of the latter with the socage tenure of ancient arable land in a manor: it may, therefore, be held by copyholders or by strangers to a manor, and may arise by grant or prescription since Quia Emptores, and is not necessarily confined to commonable beasts. See COMMONABLE.

Common of pasture appurtenant may be either simple or reciprocal: the former occurs where the owner of the waste has no pasture over the tenant's land in return, the latter where neighbours have a mutual right of turning out cattle to feed on each other's land. The simple right is usually exercised upon the waste of a manor by the tenants, and by strangers who can show a grant or prescribe: such strangers may be either individual landowners in the neighbourhood, or a whole body of tenants within an adjoining lordship. The reciprocal right is found in shack fields, and open meadows or common fields, which at certain seasons are open to the cattle of all the proprietors of allotments. Such a right may also be alternate as well as reciprocal, as where one township has common in another during one season, and the second has common in the first during the next, and so on.

Common because of vicinage (*pur cause de vicinage, causâ vicinagii*) is where the tenants of two adjoining manors, the inhabitants of two adjoining townships, or the owners of two contiguous pieces of land, have from time immemorial "intercommoned," *i.e.* allowed each other's cattle to stray and pasture on each other's land, or on a waste or open field lying between their lands. This kind of common is allowed by the law to exist in order to avoid the disputes which would arise on both sides if actions could be brought for trespass, or if distress damage feasant could be made whenever the cattle of one person stray over the undivided land of the other. Consequently, either party may put a stop to it by enclosing his land. The chief

difference between this and the other kinds of common is, that a commoner *pur cause de vicinage* may not put his beasts into another's land, but must first put them into his own land, and then the beasts may stray and go into the other common without being distrained. See HORN WITH HORN.

Common of pasture in gross differs from the foregoing varieties of common in being unconnected in any way with the tenure or occupation of land. It may be created either (1) by the owner of a common appurtenant for a fixed number of cattle alienating the common without the tenement to which it belongs, or (2) by the owner of land granting to another man and his heirs the right to put beasts on the land of the grantor, with or without restrictions as to number and time of year. It is also said that a common in gross may be claimed by prescription in respect of mere inheritance. See PRESCRIPTION.

Common appendant, appurtenant, and in gross, are either certain by number, that is, for a certain number of beasts, or certain by levancy and couchancy (q.v.), or *sans nombre* (q.v).

The following rights of common differ from common of pasture in being limited to those parts of the land where the product is found, while common of pasture extends to every place across which the cattle may wander in search of food, although there may be no pasture there.

Common of estovers is the right of taking from the woods or waste lands of another person a reasonable portion of his timber or underwood for use in the commoner's tenement. As to the different kinds of estovers, see ESTOVERS. Common of estovers is either appurtenant, that is, annexed to land, or in gross, that is, existing independently of land. See *supra*, and IN GROSS.

Another species of common, often included under common of estovers, is the right to take, for use on the commoner's tenement, part of the wild herbage and brushwood (such as heath, furze, broom, fern, rushes, and, in some manors, hay) from the land of another.

Common of turbary in its modern sense is the right of taking peat or turf from the waste land of another for fuel in the commoner's house. It appears that formerly a distinction was drawn between peats (*turbæ*) from a peat-moss or boggy ground, and "flags" (French *blêches*, Latin *blestiæ*) or turves pared from the surface, and that strictly speaking common of turbary does not give a right to take "flags," that being destructive of the pasture. The right is, however, unimportant at the present day; it is analogous to common of estovers, and is therefore either appurtenant or in gross, but not appendant.

As to common of piscary, see FISHERY.

Common of digging, or common in the soil, is the right to take for one's own use part of the soil or minerals in another's land; the most usual subjects of the right are sand, gravel, stones and clay. It is of a very similar nature to common of estovers and of turbary (*supra*, and see DOLE; TINBOUNDING).

In some parts of the country a right of taking wild animals (such as conies or wildfowl) from the land of another has been found to exist; in the case of wildfowl it is called a common of fowling.

As to apportionment of commons, see APPORTION. See also SANS NOMBRE; LEVANCY AND COUCHANCY; SURCHARGE; PAWNAGE.

Common is sometimes used to denote certain rights which resemble rights of common in the strict sense (*supra*), in giving a person the right of taking the profits of land in common with others; they nevertheless differ from rights of common in some essential point. Thus the right of the lord of a manor to take profits from the waste of the manor in common with the tenants is not strictly a right of common, because the waste is vested in him, and no one can have common in his own land. See PASTURE; SEIGNORIAL.

So cattle-gates or stints, the rights of pasture of the inhabitants of a parish or other similar class over lammas-lands, etc., are not rights of common, though frequently so called, but shares in the vesture of land, and therefore corporeal hereditaments.

Common also signifies a piece of land subject to rights of common. As to the enclosure and regulation of commons under the Commons Acts, see INCLOSURE.

Commonable in its widest sense is applied to a thing over, by, or in respect of which a right of common may be exercised. Thus commonable land is land subject to a right of common; therefore under a grant of common of pasture, pasture-land only is "commonable," that is, may be used by the commoner. So a "commonable messuage" is a house to which a right of common is attached; and "commonable beasts" (in the primary sense of the phrase) are those animals which a commoner is entitled to put on the common; thus sheep are commonable beasts under an ordinary right of common of pasture, but not in royal forests. As the only commonable beasts in

The New Zealand Company was formed by royal letters patent, dated 12th February, 1841, for the purpose of colonising New Zealand, but was given no sovereign rights. The letters patent were supplemented by the statutes 9 & 10 Vict. c. 42 and 10 & 11 Vict. c. 112. The latter Act provided, by s. 19, that the company might relinquish its undertaking subject to certain conditions; and the company availed itself of this provision in 1850.

The British North Borneo Company was incorporated on 1st November, 1881, by royal charter granted to enable it to take over "absolute rights of sovereignty" in the northern portion—containing about 30,000 square miles—of the island of Borneo. The charter empowers it to trade, but it does not do so; it confines itself to administration and development, and is now the only chartered company which actually governs.

The British South Africa Company was incorporated by royal charter, dated 29th October, 1889, for the purpose of taking over proprietary rights in Rhodesia and administering the half-million, or thereabouts, of square miles contained therein. The company has still a large share in the administration of Rhodesia, but steps are being taken for the establishment of responsible government on the usual colonial model.

Under the Companies (Consolidation) Act, 1908, s. 249, the two last-mentioned companies have been formed into limited companies, but this step has never been taken as regards the Hudson's Bay Company.

Companies, City. From about the year 1100 there existed in England associations known as trade or craft guilds (see GILD). From about the year 1300 admission to the freedom of the City of London was confined by royal charter to members of these guilds and their apprentices. In 1376 the guilds were given, by a vote of the citizens, the right to select the freemen who were to elect the members of Parliament for the city, and also the Lord Mayor and the sheriffs and corporate officials. In 1384 another vote of the citizens constituted the Court of Common Council, and provided that the council should consist of freemen; and in 1475 another vote declared that the guilds were to select as electors only persons who were members of the livery (who were above the freemen) of the guilds and also freemen of the city. The guilds had thus, without royal or statutory sanction, got into their own hands the control of all parliamentary and local elections in the City of London; and this control continued without any interference by the Legislature until 1725, when the statute 11 Geo. 1, c. 18, was passed to regularise it. Meanwhile the guilds had in many cases been transformed into companies by royal charters of incorporation, which began about 1325 and continued to be granted for a period of nearly three hundred years; and for all municipal purposes the companies took the place of the guilds. The Representation of the People Acts, 1832, 1867, and 1918, deprived the liverymen—that is to say, the companies—of what the Act of 1725 terms their "rights and privileges" as regards the parliamentary franchise, though under s. 17 of the Act of 1918 a freeman who is qualified in respect of a business qualification within the city can be registered on a separate list of liverymen in the register of parliamentary electors; but the companies have still indirectly the election of the Lord Mayor and other city officers in their hands.

There are at present twelve "great" companies and sixty-two others. The "great" companies and several of the others are wealthy corporations; their incomes are largely devoted to benevolent purposes.

The companies have long ceased to consist of persons employed in the trade denoted by the names (*e.g.*, the Bowyers, that is to say, the Bowmakers' Company) they bear. Many of the members are not connected with the city at all. Patrimony (being the child of a member) and apprenticeship to a member are still qualifications for admission, but admission is mostly now by "redemption" or payment of an entrance fee.

The companies referred to above are those known as livery companies. There are two other city companies—the Watermen's (q.v.) Company and the Parish Clerks' Company—who never formed part of the city governing body; their members are not liverymen, and they are not livery companies.

See FREEDOM OF A BOROUGH.

Companion. A title of certain members of various Orders of Chivalry (see KNIGHTHOOD, ORDERS OF) and other Orders (q.v.).

Companions of Honour, Order of the. This Order was founded in 1917. It consists only of Companions (C.H.), who may be either men or women. They rank next after G.B.E.s (see BRITISH EMPIRE).

Company. A company is an association of persons formed for the purpose of some business or undertaking carried on in the name of the association, each member having the right

of assigning his shares to any other person, subject to the regulations of the company.

An incorporated company is a corporation formed for the purpose of carrying on a business for profit. Such companies are incorporated either (1) by charter (q.v.); (2) by special Act of Parliament; or (3) by registration under one of the public general Acts relating to companies.

Unincorporated companies are associations of individuals not forming a corporation, but carrying on business under a corporate name, and having certain qualities resembling those of incorporated companies. To this class belong (1) companies formed under the Chartered Companies Act, 1837, which enables the Crown, without incorporating a company, to confer upon it, by letters patent, certain privileges, including the power of suing and being sued by a public officer (q.v.) and limited liability; (2) companies formed under private Acts of Parliament, generally with the power of suing and being sued by a director or other officer; (3) companies formed for banking under the County Bankers Act, 1826, and having certain privileges, such as that of suing and being sued by a public officer; (4) cost book companies (q.v.); (5) companies formed without the authority of a charter or Act of Parliament, and before 2nd November, 1862 (see the repealed Companies Act, 1862, s. 4), consisting of a large number of members, with transferable shares, and a directorate for the management of the business. The question whether the last-mentioned class of unincorporated companies are illegal has been much discussed, but it would appear that they are not in fact illegal. To this class belong what are sometimes called scrip companies, in which the members simply hold scrip certificates, transferable by delivery. See SCRIP.

Companies are described as limited or unlimited, according as the liability of their shareholders is or is not limited. In the case of an unlimited company, each shareholder is liable to contribute to the debts of the company to the full extent of his property (see CALLS), but some insurance companies, though strictly speaking unlimited, are practically limited by the insertion in each policy of a clause, restricting the claim of the assured to the amount remaining unpaid-up on each share, which (see the Companies (Consolidation) Act, 1908, s. 123 (1) (vi.)) is not against the law.

A company is limited either by the amount of the share which each member takes in the company, and beyond which he therefore cannot be compelled to contribute to the debts of the company (company limited by shares), or by the amount which each member undertakes by the memorandum of association (q.v.) to contribute to the assets of the company in the event of its being wound up (company limited by guarantee); the latter mode is used in the case of companies supported by annual subscriptions, or formed on the principle of mutual assurance. There is a hybrid kind of company in which the liability of the shareholders is limited (either by shares or by guarantee), while the liability of the directors or managers, or the managing director, is unlimited (Companies (Consolidation) Act, 1908, ss. 60, 61). Provision for the creation of such companies seems to have been considered desirable from a mistaken view of the nature of French *sociétés en commandite*; the provision is a dead-letter. See COMMANDITE.

A company formed for profit must, if the liability of its members is limited, have the word "limited" as the last word in its name (*ib.*, ss. 3, 4, 63). When a company limited by shares has obtained the leave of the Court to reduce its capital, the words "and reduced" must be added and used as the last words of its name for a certain period to be fixed by the Court (s. 48). See REDUCTION OF CAPITAL.

A limited company may create a reserve capital as security for its creditors, by providing that a certain portion of its capital shall not be capable of being called up except in the event of the company being wound up (ss. 58, 59).

A bank of issue registered as a limited company is not entitled to limited liability in respect of its notes (s. 251).

Joint stock companies are those having a joint stock or capital which is divided into numerous transferable shares, or consist of transferable stock (s. 250). (See STOCK.) The term "joint stock" was originally applied to those companies which were formed without the authority of any statute; and afterwards to those formed under various Acts from 1825, including the Joint Stock Companies Acts of 1844, 1856 and 1857.

Companies are divided into public and private.

Before the enactment of the Companies Act, 1907, a "public company" was understood to be one which invited the public to subscribe for its shares, and a "private company" was understood to be one which did not; but there was no definition of the two terms, and both kinds of companies were subject to the same enactments. The Act

of 1907 was repealed and replaced before it came into operation by the Companies (Consolidation) Act, 1908. A "public company" now means a company limited by shares, which, whether it does or does not invite the public to subscribe for its shares, is not a "private company" as defined by the Companies (Consolidation) Act, 1908 (*ib.* s. 121). But public companies are still divisible into public companies which invite the public to subscribe for their shares and public companies which do not, the latter being popularly described as *quasi*-private companies, and being in fact such companies as up to 1907 were known as private companies. A *quasi*-private company has to comply with certain special requirements which do not apply to other public companies (see the Companies (Consolidation) Act, 1908, ss. 72, 85, 89 (1)). But the distinctions between the two varieties of public companies are unimportant as compared with the distinctions between public companies generally and private companies. A private company means one which (*a*) restricts the right to transfer its shares: (*b*) limits the number of its members (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were while in such employment, and have continued after the determination of such employment to be, members of the company) to fifty; and (*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company (Companies (Consolidation) Act, 1908, s. 121 (1), as amended by the Companies Act, 1913, s. 1). Any two or more persons may form or carry on a private company (Companies (Consolidation) Act, 1908, ss. 2, 115), whereas it takes seven to form or carry on a public company (*ib*), and the two persons who may form the private company have merely to subscribe for at least one share each and to deliver to the registrar a memorandum of association signed by them, and the articles of association, and to pay the prescribed fees (*ib*), whereupon the certificate of incorporation is issued and the company can commence business at once (s. 87 (6)). A public company, on the other hand, can be formed and commence business only after compliance with a number of formalities. A private company must file annually with the registrar a list of its members (s. 26), but not the balance sheet required in the case of public companies (s. 26 (3)), and must also file a certificate that the number of its members is not in excess of the prescribed limit, and that the public have never been invited to subscribe for shares or debentures (Companies Act, 1913, s. 1 (3)). A private company need not make out the statutory report as to the position of the company which public companies must file with the registrar and send to the shareholders before the statutory annual meeting (Companies (Consolidation) Act, 1908, s. 65 (10)). The holders of the preference shares, debentures and debenture stock of a private company have no right to inspect the balance sheets, etc. (*ib.* s. 114 (2)). As to other privileges of a private company, see ss. 82 (2), 83, 85 (7), 72 (3).

The Companies (Consolidation) Act, 1908, as amended by the Companies Act, 1913, codifies the law as to companies and should be referred to for further information.

The law as to private companies and the manifold advantages of such companies are admirably set out in *Palmer's Private Companies*, a handbook intended primarily for laymen but most useful for lawyers.

See MEETING.

Comparison of Handwriting. By the common law it was not allowable to prove the handwriting of a party to a document by a comparison between it and other documents proved or assumed to be in his handwriting. This rule was practically abolished by the Common Law Procedure Act, 1854, ss. 27, 103, now repealed and replaced by the Criminal Procedure Act, 1865, s. 8.

Compensatio criminum. In the Ecclesiastical law, there was held to be a *compensatio criminum*—literally a compensation of offences—when both husband and wife were guilty of adultery, so that the offence of the one was set off against the offence of the other.

Compensation is a recompense or reward for some loss, injury or service, especially when it is given by statute. Thus, Acts for the construction of railways and other public works provide for the payment of compensation to the owners of land taken compulsorily for the purposes of the works, this being done by the incorporation of the Lands Clauses Consolidation Act, 1845, the Railway Clauses Consolidation Act, 1845, or such other general Act as applies to the works in question. So the Agricultural Holdings Acts (q.v.), provide for the payment of compensation to agricultural tenants for improvements (draining, manuring, etc.) executed by them on their holdings, and for disturbance; and the Criminal Law Act, 1826, and the Criminal Justice Administration Act, 1851, empower courts of criminal

jurisdiction to award compensation to persons who have been active in the apprehension of prisoners charged with certain crimes. See also COMMON EMPLOYMENT.

In agreements between vendors and purchasers of real estate, it is usual to stipulate that errors, misdescriptions and omissions in the particulars of sale or description of the property, shall not avoid the sale, but be the subject of compensation. But such a stipulation will not protect the vendor in the case of a misdescription arising from fraud or gross negligence, or of such a nature that in the absence of it the purchaser would presumably not have entered into the contract at all.

As to the doctrine of compensation with reference to questions of equitable election, see ELECTION.

As to compensation to holders of licences for the sale of intoxicating liquors by retail, the renewal of whose licences is refused in order to reduce the number of licensed premises, see the Licensing (Consolidation) Act, 1910, ss. 19-21).

Compensation Authority. The body in which is vested the power to refuse the renewal of an old on-licence (q.v.) on any ground other than any of the grounds specified in Part 2 of the Second Schedule to the Licensing (Consolidation) Act, 1910: see s. 18 of that Act. The compensation authority in a licensing district, being a petty sessional division, is quarter sessions; in a county borough, it is the whole body of borough justices; and in other boroughs, it is the quarter sessions of the county (s. 2). If it be the quarter sessions of a county it must, and in other cases it may, delegate its powers to a committee (s. 6). In a county, the one committee may represent both the compensation and the confirming authorities (s. 6). As to the functions of the compensation authority, see ss. 19-21. See CONFIRMING AUTHORITY.

Compensation for Disturbance. Under s. 11 of the Agricultural Holdings Act, 1908, a tenant was entitled to compensation for unreasonable disturbance in pursuance of notice to quit by his landlord. That section is repealed by the Agriculture Act, 1920, which (s. 10) gives him a right to compensation for disturbance, unless (*a*) he is not farming according to the rules of good husbandry, or (*b*) has failed to comply with a notice to pay rent or to comply with a condition (consistent with good husbandry) of his tenancy, or (*c*) has committed a breach (incapable of remedy) of any such condition, or (*d*) has become bankrupt or has arranged with his creditors, or (*e*) has refused arbitration as to his rent, or (*f*) has refused to execute at his landlord's expense an agreement setting out the terms of the tenancy. The section provides that the compensation shall not be less than one year's rent, and may be anything not exceeding two years' rent which is proved to be the actual amount of the loss sustained; and it provides further that if a tenant leaves upon notice to quit given by him in consequence of the landlord's refusal to go to arbitration regarding the rent, then such tenant shall be entitled to compensation as if the landlord had served the notice to quit.

Compensation for Improvements. The effect of the Agricultural Holdings Acts, 1908 to 1920, as regards payment of compensation for improvements is as follows:—

Compensation is payable for the following improvements on an agricultural holding though the landlord has neither received notice of nor consented to them:—Chalking; clay-burning; claying; liming; marling; manuring with purchased manure; consumption on holding by horses not regularly employed thereon, or by cattle, sheep, or pigs, of feeding stuff not produced thereon, or of corn produced thereon; laying down, more than two years before the termination of the tenancy, temporary pasture with clover, grass, lucerne, sainfoin, or other seed, in so far as the value of the temporary pasture at the time of quitting exceeds the value of temporary pasture on commencement of the tenancy for which the tenant did not pay compensation (Act of 1908, Sch. I., Pt. III.); and, in the case of market gardens, planting of fruit trees or bushes permanently set out, planting of vegetable crops which remain productive for more than two years, or erecting or enlarging buildings for market-gardening purposes (Act of 1908, Sch. III.).

Compensation is payable for repairs (other than those which the tenant is bound to execute) to buildings necessary for working the holding only if notice was given to the landlord and he failed to execute them (Act of 1908, Sch. I., Pt. III.).

Compensation for drainage is payable only when notice of intention to drain has been given to the landlord, and when landlord and tenant have not agreed as to the amount (Act of 1908, Sch. I., Pt. II.).

Except where compensation is payable, as stated above, in the case of a market garden, no compensation is payable for the following improvements unless executed with the written consent of the landlord:—Any build-

ing work; formation of silos; laying down permanent pasture; making osier beds, water meadows or works of irrigation, or gardens; making or improving roads, or bridges, or works for the supply of water or water-power for domestic or agricultural purposes; making or removing permanent fences; planting hops, orchards, or fruit bushes; protecting young fruit trees; reclaiming waste land; warping or weiring of land; embankments and sluices against floods; erection of wire-work in hop gardens (Act of 1908, Sch. I., Pt. I.); provision of permanent sheep-dipping accommodation, or removal from arable land of bracken, gorse, tree roots, boulders, etc. (Act of 1920, Sch. I.).

Where compensation is payable, its amount is to be such sum as fairly represents the value of the improvements to an incoming tenant (Act of 1908, s. 1 (1)). In default of agreement between landlord and tenant as to the amount, the amount is to be fixed by arbitration (*ib.* s. 6).

Any contract by a tenant is void in so far as it purports to deprive him of the right to compensation (Act of 1908, s. 5); but, instead of compensation under the Acts, a tenant may agree to accept, in respect of drainage or of improvements for which the written consent of the landlord is required, such compensation as is agreed on between landlord and tenant, or in respect of improvements for which neither notice to nor the consent of the landlord is required, such "fair and reasonable" compensation as is agreed on between landlord and tenant (Act of 1908, ss. 2, 3 (1), 4, 5).

It is to be noted that the right to compensation for improvements is restricted in the case of a tenant about to quit. No compensation is payable for improvements, other than the application of purchased manure or the consumption on the holding (by horses not regularly employed thereon, or by cattle, sheep or pigs) of feeding stuffs not produced thereon, or of corn produced thereon, made (*a*) in the case of a tenant from year to year, within one year before he quits or at any time after he has given or received notice to quit, and (*b*) in the case of any other tenant, within one year of the expiration of the tenancy; but this does not apply where the tenant has served notice of intention to improve, and the landlord has not objected within a month after receipt of the notice, or, in the case of a tenant from year to year, where the tenant has begun the improvement during the last year of his tenancy and then, upon notice to quit subsequently given by the landlord, quits at the end of that year (Act of 1908, ss. 9, 48).

Competency; Competent. A person is said to be competent to testify, or a competent witness, when he is allowed by law to give evidence on a trial or other judicial inquiry. The question of a witness's competency may arise either with reference to his ability to give evidence generally (absolute incompetency), or with reference to a particular fact or inquiry (relative incompetency). Thus an idiot is not competent to give evidence at all; while neither a husband nor a wife is a competent witness as to whether they have or have not had sexual intercourse with each other.

Competency is of course a different thing from compellability. Thus an accused person, or the wife or husband of such person, is now in all cases a competent witness for the defence (Criminal Evidence Act, 1898, s. 1), but the accused cannot be examined except on his own application (*ib.*), nor can the wife or husband be examined except on the application of the accused, unless the charge be under one of the enactments mentioned in the Schedule to the Act (*ib.*), in which case the husband or wife is a compellable witness (s. 4).

See INTERESTED WITNESS.

Complaint. In proceedings before justices of the peace to obtain an order for the payment of money, the proceedings are commenced by a complaint, which is a statement of the facts of the case made by the complainant or person aggrieved, sometimes in writing, sometimes verbally, while the proceedings in criminal matters are commenced by an information (q.v.). As to bills of complaint, see that title.

Compos mentis. Of sound mind. Generally used as part of the phrase *non compos mentis* (q.v.).

Composition, in its widest sense, is an arrangement between two or more persons for the payment by one to the other or others of a sum of money in satisfaction of an obligation to pay another sum differing either in amount or mode of payment. "Composition" also signifies the sum so agreed to be paid. See ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS; COMPOUND.

In the law of tithes any owner of land may claim exemption from tithes in respect of that land by reason of a real composition, which is an agreement made between him and the incumbent, with the consent of the ordinary and the patron, that the land shall for the

future be discharged from payment of tithes by reason of some land or other real recompense given in lieu and satisfaction thereof (Tithe Act, 1832, s. 2).

Composition Deeds. Now Deeds of Arrangement. See ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS.

Compositione Ponderum et Mensuram, De. The same as the ASSISA DE PONDERIBUS, ETC. (q.v.).

Compound. To compound for a debt is for a debtor and creditor to agree that the creditor shall accept a composition or smaller sum in discharge of the original debt, *e.g.*, on the ground of the debtor's inability to pay the whole. See COMPOSITION; ACCORD AND SATISFACTION.

In criminal law, to compound a felony is to enter into an agreement, for valuable consideration, not to prosecute a person for felony, or to show him favour in a prosecution, as where a person takes back goods which have been stolen from him upon agreement not to prosecute. It is a misdemeanour (q.v.). It is also a misdemeanour to compound an action or information under a penal statute without leave of the Court (18 Eliz. c. 5). See STIFLING.

Compound Householder. By the Poor Relief Act, 1819, s. 19, reciting that the payment of poor's rates was greatly evaded by houses being let out in separate apartments or for short terms, it was enacted that it should be lawful to rate the owners of such houses instead of the occupiers. As the effect of this was to keep the names of the occupiers off the rate-books and thus deprive them of their municipal and parliamentary franchise, the Compound Householders Act, 1851, and the statute 21 & 22 Vict. c. 43, enacted that such occupiers should have the same privileges as if they were themselves rated to the relief of the poor, provided that the rates were paid either by them or the owner. Such persons were called "compound householders." The Compound Householders Act, 1851, and the Act which had repealed and replaced the statute 21 & 22 Vict. c. 43, were repealed by the Representation of the People Act, 1918, Sch. 8, and the last-named Act has created new franchises, both parliamentary and municipal, in no way dependent on the payment of rates.

Compound Settlement. See SETTLEMENT.

Compromise is where the parties to a dispute dispose of it by agreement between themselves, whether legal proceedings have been commenced or not. See ACCORD AND SATISFACTION; COMPOUND.

Where proceedings have been commenced, a compromise may be agreed on and may provide that it may be made a rule of Court (q.v.) so as to terminate the proceedings.

A compromise of an action cannot be set aside on a summons in that action. It can be set aside only in a fresh action, or, where an action to enforce it has been instituted, on a counterclaim in such action.

Compromissarii sunt judices (*Jenk. Cent.* 128). (Arbitrators are judges.)

Compter or **Counter.** The debtors prison anciently attached to the court of the mayor or sheriffs of a borough. In the City of London there were two—the Poultry Compter, demolished in 1817, and the Giltspur Street Compter, which was closed in 1854. The latter had in 1791 taken the place of the Wood Street Compter, which had in 1555 replaced the Bread Street Compter.

Comptroller; Controller. The Comptroller in Bankruptcy was an officer whose duty it was to receive from the trustee in each bankruptcy his accounts and periodical statements showing the proceedings in the bankruptcy, and also to call the trustee to account for any misfeasance, neglect, or omission in the discharge of his duties (Bankruptcy Act, 1869, s. 51)

In the former Court of Chancery there were officers known as Controllers of the Hanaper, whose offices were abolished by the Court of Chancery Act, 1842. They took all documents which had been sealed by the Clerk of the Hanaper (q.v.), and entered them in a book. There were also Controllers of the Pipe (q.v.) and of the Pell (q.v.), who like the Pipe and the Pell, have disappeared.

There are still several comptrollers. There are, for instance, the Comptroller of the Chancery Court of the County Palatine of Lancaster, who checks the receipts and payments of the moneys of suitors in that Court; the Comptroller and Auditor-General of the Exchequer and Audit Department (q.v.); and the Comptroller-General of Patents, Designs, and Trade Marks, as to whom see the Patents and Designs Act, 1907, ss. 73-76; and there are several others. The title is sometimes spelled "controller," as in the case of the "Controller of the Stationery Office."

In connection with the households of the King and the other members of the Royal Family, there are many comptrollers. The most important is the Comptroller of the King's Household; he is a member of the

and consignors of goods is provided for by s. 31 (the "conciliation clause") of the Railway and Canal Traffic Act, 1888; and the Conciliation Act, 1896, enabled bodies established or persons appointed for the purpose of settling disputes between employers and workmen to act under the direction of the Board of Trade, whose functions under the Act are now vested in the Minister of Labour (q.v.). No such body (conciliation board) or person (conciliator) can do more than bring the parties to the dispute together, and endeavour to get them to come to a settlement. See COUNCIL OF CONCILIATION.

Concilium. In proceedings on a writ of error in a criminal case, a rule directing the case to be put down in the paper for argument was obtained as soon as the joinder in error was filed. This rule was called a rule for a concilium (*dies concilii*, a day to hear counsel). Writs of error in criminal cases were abolished by the Criminal Appeal Act, 1907, s. 20 (1). Before 1883 a similar rule was required in a civil action when issue had been joined in demurrer. See WRIT OF ERROR; JOINDER; DEMURRER.

Concilium magnum regni. The Great Council (q.v.).

Concionator. An old term formerly used to describe a common councilman of the City of London.

Conclude is to bar or estop (q.v.).

Conclusion is (i) an irrebuttable presumption or rule of law (see PRESUMPTION); (ii) an estoppel (q.v.).

In the old common law practice, that part of a pleading by which the party offered that the issue raised should be tried by a jury was called a "conclusion to the country." See COUNTRY.

Under the old Admiralty practice a party who had a right to plead further might, if he thought fit, file what was called a conclusion, by which he denied the statements in the preceding pleading, and prayed that the pleadings might be concluded. It answered to what is now called a joinder of issue (q.v.).

Concord, in the old books, signified an agreement for the compromise of a right of action arising out of a trespass. It also signified a part of a fine (q.v.).

Concurrent Jurisdiction. Used to be that portion of the law which was enforced (prior to the 1st of November, 1875) in the Courts of Equity equally with the Courts of Law, and in which equity assumed a concurrent jurisdiction chiefly upon the ground of the remedy at law being inadequate or adequate only in a circuitous way. Under the Judicature Acts, 1873-5, the entire jurisdictions of law and equity were made concurrent in name, but the old distinctions of substance were not affected by that merely nominal fusion. See EXCLUSIVE JURISDICTION; AUXILIARY JURISDICTION.

Concurrent Writ. See ALIAS WRIT. A concurrent writ is frequently issued for service out of the jurisdiction (Ord. 6, r. 2).

Concussionis, Crimen. The offence of extortion (10 *Rep.* 102), which in the Roman law (see *Dig.* 47, 13), was known as *concussio*.

Condemnation is where a Court of competent jurisdiction adjudges a prize or captured vessel to have been lawfully captured. The effect of a condemnation is to vest the property in the captor, unless the Court, either before or after condemnation, orders it to be sold or delivered up on bail, in which case the proceeds of sale or the appraised value takes the place of the property itself. The High Court of Justice, in its Admiralty jurisdiction, is the principal Court for deciding such questions in the British dominions. See CAPTURE; PRIZE COURTS.

Condemnation Money. The party who fails in a suit or action is sometimes said to be "condemned in" the action, whence the damages to which such failure has made him liable used to be frequently called "condemnation money." Thus, in proceedings to enforce a recognisance by writ of *scire facias* (q.v.), the persons who went bail for the defendant stipulated that, if he should be condemned in the action, he should pay the "condemnation money," or render himself into custody.

— **Conditio beneficialis quæ statum construit, benignè, secundum verborum intentionem, est interpretanda; odiosa, autem, quæ statum destruit, strictè, secundum verborum proprietatem, accipienda** (8 *Co.* 90). (A beneficial condition, which creates an estate, ought to be construed favourably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.)

Condition. A condition is a declaration or provision which makes the existence of a right dependent on the happening of an event, and the right is then called conditional, as opposed to an absolute right. Thus if A leaves a legacy in the following form: "I give £100 to B if he shall act as my executor," the legacy is conditional, because B's right to the £100 is dependent on the fulfil-

ment of the condition, that is, on his acting as executor.

Conditions are either true or apparent. A true condition is where the event on which the existence of the right depends is future and uncertain ("I give Blackacre to A if B shall die without leaving children"). Apparent conditions, or conditions merely in form, are (i) where the event, though unascertained, is not future, but is either happening at the time the condition is created ("if A is now living"), or has already happened ("if A is dead"); (ii) where the event, though future, is not uncertain, either because it must necessarily happen ("I give Blackacre to A if B shall die"), or because its happening was always impossible (*infra*); (iii) where the condition is a mere repetition or expression or something implied by law from the nature of the right; as if an estate is given to A in tail, and if A's issue fail, then to B: here the words "if A's issue fail" do not create a condition, being merely an unnecessary expression of what is implied in A's estate tail, which can only last so long as he has issue.

With reference to their creation, conditions are either express or implied. An express condition (or condition in deed) is one, as Lord Coke puts it, "expressed by the partie in legall termes of law," as in the examples given above. An implied condition (or condition in law) is one "created by law without any words used by the partie," as Lord Coke said, whether the parties had it in their minds at the time or not; thus, in every policy of marine insurance, a condition or warranty that the vessel is seaworthy is implied in law See WARRANTY.

With reference to their effects, conditions are of various kinds. A condition precedent is one which delays the vesting of the right until the event happens; thus, if I give £100 to A if he shall act as my executor, A's right to the legacy is dependent on a condition precedent, because the performance of it must precede his receipt of the £100.

A condition subsequent is where the event is to destroy or divest an existing right; thus, if I give an annuity of £100 to C so long as she shall remain my widow, this creates a condition subsequent, because the performance of it is subsequent to the vesting of the right. Conditions are either possible or impossible. A condition may be impossible either *ab initio* or by matter subsequent, and in the latter case the impossibility may arise from the act of the person who is to perform the condition, of the person for whose benefit it is to be performed, of a stranger, by the act of God (*e.g.* death), by *vis major*, or by a combination of these. Impossibility is either physical ("If A go from the church of St. Peter in Westminster to the church of St. Peter in Rome within three hours"), logical ("I give my land to my executors if they shall sell it"), or legal, where the act required is legally inoperative ("If A shall make a valid will during his minority"). Conditions are independent when they must be performed without reference to one another, dependent, when one has to be performed before the other need be performed, and mutual, when one party need not perform his condition unless the other is willing and ready to perform his. A condition is illegal when its performance is forbidden by law ("If you kill such a man I will give you ten shillings"), or where it is against some maxim or rule of law (as if I make a conveyance to a man upon condition that he shall not alien the land, this condition is repugnant and against law, and the grantee takes the land absolutely). These divisions are important with reference to the effect of non-performance of the condition: thus, as a general rule, if a condition precedent is illegal or impossible, the right does not vest at all, while an illegal condition subsequent has no effect. Again, if a condition precedent, which was originally possible, becomes impossible by the act of the person intended to be benefited, the right vests as if the condition had been performed. As to conditions in restraint of marriage, see RESTRAINT OF MARRIAGE.

In the old writers, condition is used in the technical sense of a condition annexed to realty, which Coke defines as "a qualitie annexed by him that hath estate, interest, or right to the same, whereby an estate, etc. may either be defeated or enlarged or created upon an incertaine event." As to estates on condition, see ESTATE. Formerly, "condition" included both conditions in the strict sense, and what are now more commonly called conditional limitations, the distinction being that when a freehold estate is limited to cease on a condition, and the condition happens, the person in whose favour the condition is reserved must make an entry or claim, otherwise the estate continues; in the case of a conditional limitation, on the other hand, the estate determines *ipso facto* on the happening of the event, and the remainder or reversion takes effect in immediate possession. (See LIMITATION.) If, however, a leasehold estate is granted on condition, it determines

ipso facto on breach of the condition without any entry being required, unless an entry is expressly stipulated.

Formerly, a condition was not assignable in any way, but by the statute 32 Hen. 8, c. 34, a condition annexed to a reversion passes on an assignment of the reversion.

As to the apportionment of conditions, see APPORTIONMENT.

Condition is also used as equivalent to restriction or stipulation—*e.g.*, conditions of sale (q.v.). See WARRANTY.

The Land Transfer Act, 1875, s. 84 (as amended by the Land Transfer Act, 1897, s. 18, Sch. I.), provides for the registration, as annexed to registered land, of conditions that the land is not to be built on or put to a particular use, or of any other conditions running with or annexed to land, or of any restrictive condition capable of affecting assigns by way of notice. See COVENANT.

Conditional Acceptance. See ACCEPTANCE.

Conditional Fee. See FEE.

Conditional Limitation. See LIMITATION.

Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium (*Lofft*, 644). ([Restrictive] conditions are all of them objectionable, but more especially those which are in restraint of marriage and trade.)

Conditions of Sale. When property is to be sold by auction, the terms on which the purchaser is to take it are usually specified in a document called the conditions of sale, copies of which are distributed among intending bidders. In the case of land, houses, etc., the conditions are usually printed with the particulars of sale (q.v.); in the case of furniture, books, etc., they are usually printed at the beginning of the catalogue.

Conditions of sale of real property generally contain elaborate provisions as to the title which the purchaser is to accept, and the means by which it is to be proved. On the conclusion of the sale the purchaser signs a memorandum indorsed on the conditions, which thus form a contract of sale. Such contract is, however, subject to such of the provisions of the Vendor and Purchaser Act, 1874, s. 2, and of the Conveyancing Act, 1881, s. 3, as apply to the property comprised in the contract.

See TITLE; ABSTRACT.

Conditio præcedens adimpleri debet priusquam sequatur effectus (*Co. Litt.* 201*a*). (A condition precedent must be fulfilled before the effect can follow.)

Condonation is forgiveness of a conjugal offence, with full knowledge of all the circumstances. It usually consists of the resumption of marital relations; and its effect is to restore the offending person to the same position which he or she held before the offence was committed, so that the injured person cannot subsequently seek redress for it by proceedings for a divorce or judicial separation. See REVIVAL.

Conduct Money is money given to a witness to defray his expenses of coming to, staying at, and returning from the place of trial. A witness is entitled to decline to attend or be sworn until his expenses have been paid or tendered to him. This applies to civil proceedings either in the High Court (5 Eliz. c. 9) or in the County Court (County Courts Act, 1888, s. 111). A like rule applies to witnesses in cases with regard to which there is summary jurisdiction (Summary Jurisdiction Act, 1848, s. 7; Criminal Justice Administration Act, 1914, s. 29), but not to witnesses summoned to give evidence on the preliminary investigation of indictable offences (Indictable Offences Act, 1848, s. 16; Criminal Justice Administration Act, 1914, s. 29), or to a witness summoned to give evidence on the trial of an indictable offence, unless (Writ of Subpœna Act, 1805, ss. 3, 4) such witness has been served with a subpœna to attend in some part of the United Kingdom other than that in which the subpœna was served, that is to say, if, for instance, he is served in Ireland to appear in England, but not if he is served in one English county to appear in another English county. It should, however, be noted that the Costs in Criminal Cases Act, 1908, enables the Court before which an indictable offence is tried to order payment of the costs either of the prosecution, or of the defence, or of both.

Conductores. See WAFTORS.

Coneys. See RABBITS.

Confederacy, in political and popular language, is a combination of persons for any purpose. In law it formerly had the technical meaning of a combination for maintenance, and was prohibited by the Ordinance of Conspirators (33 Edw. 1), while the term "conspiracy" was appropriated to combination for the promotion of false and malicious indictments. Now the term "conspiracy" has a wholly different meaning, and the term "confederacy" is unknown to the criminal law.

Conference is a meeting between a counsel and the solicitor who instructs him to discuss (with or without the client) a question arising out of the business in hand.

In parliamentary practice, says Sir Erskine May, "a conference is a mode of communicating important matters by one House of Parliament to the other, more formal and ceremonious than a message, and sometimes better calculated to explain opinions and reconcile differences. By a conference both Houses are brought into direct intercourse with each other, by deputations of their own members: and so entirely are they supposed to be engaged in it, that while the managers are at the conference, the deliberations of both Houses are suspended." The most usual occasion of a conference is where one House is unable to agree to the amendments made by the other in a bill pending in Parliament.

Confessand. Pleading guilty. The term was used in the Halifax Gibbet Law (q.v.), under which the accused could be convicted only when confessand, backberand (q.v.), or handberand (q.v.).

Confessio facta in judicio omni probatione major est (*Jenk. Cent* 102). (An admission made in judicial proceedings is of greater force than all proof.)

Confession. In civil procedure, a confession is a formal admission. Thus, where a defendant in an action alleges any ground of defence which has arisen after the commencement of the action (*e.g.*, the bankruptcy of the plaintiff), the plaintiff may confess the defence, that is, admit its validity, by delivering a confession of defence, which is in the nature of a pleading. Under the practice before the Judicature Acts, this was called a confession of plea. Such a confession puts a stop to the action, and entitles the plaintiff to his costs up to the defence or plea confessed (Ord. 24, r. 3). Under the practice before the Judicature Acts, the defendant in an action of ejectment might confess the action, that is, admit the plaintiff's claim, and so entitle him to judgment, by delivering a notice to that effect. Under the present practice, the same result is obtained by the defendant abstaining from delivering a defence. See COGNOVIT; WARRANT OF ATTORNEY.

In criminal law, a confession is an admission of guilt, made either judicially, that is, in the course of a judicial proceeding, or not. Judicial confession may operate as an estoppel, and, if plenary, is sufficient to found a conviction, as where a prisoner pleads guilty; an extrajudicial confession, if made freely, is admissible as evidence, but never operates as an estoppel. See PLENARY; PLEA; APPROVEMENT; ADMISSIONS (IN CRIMINAL CASES).

Confession seems originally to have been applied especially to an admission by record. Thus a villein by confession was one who had confessed himself to be a villein in a Court of record. See NEIFE; and compare NATIVE.

Confession and Avoidance. A pleading is said to be in confession and avoidance when it confesses (i.e., admits) the truth of an allegation of fact contained in the preceding pleading, but avoids it (i.e., deprives it of effect) by alleging some new matter. Thus if the statement of claim alleges a breach of contract, the defendant may confess and avoid by admitting the breach and alleging that the plaintiff has waived it; so in an action for assault the defendant may plead that the assault was committed in self-defence; or if a defendant in an action on a covenant pleads a release, the plaintiff may reply in confession and avoidance that the release was obtained by fraud. See TRAVERSE.

Confession (to Priests). The Church of England does not recognise confession as a sacrament. But it recognises, as sanctioned by it, (1) public or general confession, which forms part of several of the services, and (2) private or particular confession, upon which being made the priest may in his discretion grant or withhold absolution. A priest, as part of the visitation of a sick person, is to "move" such person to make confession, which the priest must therefore hear; and it would appear to be the duty of a priest to hear the confession of any parishioner who desires that he should do so. The hearing of confessions by a priest continued to be common even after the Reformation and fell into disuse only about the end of the seventeenth century. The revival of the practice within the last eighty years has been in no way an infringement of any law.

The English law does not recognise the sacrament of confession as known to the Roman Catholic and Greek Churches; but in view of the fact that communications made in the course of such confession are never divulged, it is probable that the Courts will, of necessity, if for no other reason, hold that communications made in such confessions are privileged. See CONFIDENTIAL COMMUNICATIONS.

Confesso, Bill taken pro. Formerly this was an order made in the Court of Chancery when the defendant filed no answer (q.v.). It directed that the plaintiff should have such decree as he appeared from his bill of com-

plaint (q.v.) to be entitled to get. It was in fact an order made in default of defence. See now DEFAULT.

Confessus in judicio pro judicato habetur, et quodammodo suâ sententiâ damnatur (11 *Co.* 30). In a civil proceeding a party who makes confession (q.v.) is held to have had the case decided against him and has, so to say, judgment given against him in accordance with his own decision.

Confidential communications, in the ordinary sense of the term, are communications between a party and his solicitor, or between the solicitor and the counsel, made during and with reference to judicial proceedings, or in anticipation or for the purposes of such proceedings. If in writing, they are privileged from production; if verbal, they are privileged communications; and the contents of written communications are privileged from discovery. (See DISCOVERY; PRODUCTION; PRIVILEGE.) The question whether communications made to spiritual advisers are privileged is one which has never been authoritatively decided, though there is (for obvious reasons) a strong leaning towards allowing the privilege, more especially in the case of communications made in the course of auricular confession; communications to medical advisers are not protected from disclosure. Communications between husband and wife are protected from disclosure, even after they are separated by divorce or death.

Confirmare est id quod prius infirmum fuit firmare (*Co. Litt.* 295*b*). (To confirm is to make strong that which before was weak.)

Confirmare nemo potest priusquam jus ei acciderit (10 *Co.* 48). (No one can confirm a right before the right comes to him.)

Confirmatio cartarum. The statute 25 Edw. 1. See ARTICULI SUPER CARTAS.

Confirmatio est nulla ubi donum præcedens est invalidum et ubi donatio milla omnino nec valebit confirmatio (*Co. Litt.* 295*b*). (Confirmation produces no effect where the antecedent gift was void and not merely voidable; and where the preceding gift is a nullity, so also is the confirmation.) "A confirmation," says Coke, "cannot work upon an estate that is void in law."

Confirmation, in conveyancing, was defined by Lord Coke as "a conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased." Thus where a person was disseised of land and executed a deed of confirmation to the disseisor, the estate of the latter became absolute. There is also said to be confirmation when a wife on attaining the age of twenty-one confirms (or ratifies) a settlement made during her minority. See ADOPT; AFFIRM; CONVEYANCE; RECTIFY.

Confirmation in the ecclesiastical law is, according to Lord Phillimore, "the rite of the Church whereby the faith of the baptised person is confirmed, and graces given to him to remain steadfast in that faith." As to the confirmation of a bishop, see CONGÉ D'ELIRE.

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit (*Co. Litt.* 295*b*). (Confirmation supplies all defects, though that which had been done was not valid from its beginning.) That is to say, in the words of Coke, "confirmation can make a voidable or defeasible estate good, though it cannot work upon an estate which is void in law."

Confirming Authority. The body which confirms, or refuses to confirm, licences for the sale of intoxicating liquor by retail. (See LICENCES (iv.)). In a county it may, and as regards the confirmation of new justices' licences it must, delegate its powers to a committee (Licensing (Consolidation) Act, 1910, s. 6 (2)). See COMPENSATION AUTHORITY.

Confiscation, in international law, is where a state seizes property belonging to another state, or to its subjects, and appropriates it. Confiscation is the punishment for carrying contraband of war (q.v., and PRE-EMPTION); or for attempting to carry supplies to a place besieged or blockaded.

Forfeiture as a punishment for smuggling, etc., is sometimes called confiscation.

See BLOCKADE; SEARCH; CONDEMNATION; FORFEITURE.

Conflict of Laws. See INTERNATIONAL LAW.

Conformity, Bill of. Where the personal representative of a testator or intestate found that he could not safely administer the estate except under the direction of the Court of Chancery, he filed what was known as a bill of conformity, in order to have the estate administered under the direction of the Court. The present procedure is by way of writ of summons or originating summons. See ADMINISTRATION ACTION *or* MATTER.

Confrontation. In matrimonial suits in the Probate, Divorce and Admiralty Division of the High Court (other than suits for dissolution), the petitioner, the respondent, or the co-respondent, may be ordered to attend in Court while the witnesses are giving evidence, so as to be confronted with them (*i.e.* pointed out to them) for the purpose of identification.

Confusion. In the Roman law, this was one of the recognised methods of accession (q.v.) or *accessio*. It denoted the admixture of liquids, as distinguished from the admixture of solid matters, the latter being known as commixture. Both terms have been adopted by our law.

Confusion of Boundaries. See BOUNDARIES.

Congé d'Accorder. Leave to agree. Upon the levying of a fine, when the parties appeared in court, a pleader anciently asked for permission to enter into the necessary composition by saying, "Sir Justice, Congé d'accord." The whole procedure is given in the *Modus Levandi Fines* (q.v.).

Congé d'Elire (permission to elect) is a licence from the Crown to the dean and chapter of a bishopric, allowing them to proceed to the election of a bishop; it is accompanied by a letter missive from the King, containing the name of the person whom he would have them elect, by virtue of which licence the dean and chapter are with all speed in due form to elect and choose the said person named in the letters missive, and none other, and if they delay their election above twelve days after such licence or letters missive to them delivered, the King shall nominate and present, by letters patent under the Great Seal, such person as he shall think convenient (25 Hen. 8, c. 20). After the election has taken place, the chapter certifies the Crown of the result, whereupon the Crown signifies the royal assent by letters patent to the Archbishop of York or of Canterbury as the case may be, and the Archbishop thereupon proceeds to confirmation of the election, and to consecration (q.v.) of the bishop-elect. The confirmation is a mere matter of form, the Archbishop having no jurisdiction to entertain objections to the election on the ground of the belief as to doctrines of the bishop-elect.

The congé d'élire, it will be noticed, operates through the dean and chapter. In the case of bishoprics created by statute during the last fifty years (see BISHOPRICS), it is always provided that the Crown shall appoint the bishop by letters patent until there is a dean and a chapter, but that after there is a dean and a chapter, the bishop shall be elected on congé d'élire.

A congé d'élire appears to be also used in the election of deans on some of the old foundations.

Congeable in the old books means lawful or allowable; "disseisin is properly where a man entreth into any lands or tenements where his entry is not congeable, and ousteth him which hath the freehold," etc.

Conjugal Rights. The right of husband and wife to the society of one another and to marital intercourse. See RESTITUTION OF CONJUGAL RIGHTS.

Conjuration. This meant personal conference with the Devil, or some other evil spirit, and endeavouring by prayers and invocations to get him to reveal some secret or do something. Under the statute 33 Hen. 8, c. 8, offenders were guilty of a capital felony. The Act of Henry VIII was repealed in 1547, and was not replaced until 1562, when the statute 5 Eliz. c. 16, practically re-enacted it. The Act of Elizabeth was repealed and replaced by the statute 1 Jac. 1, c. 12, which remained on the statute book until repealed by the Witchcraft Act, 1735, s. 3, which abolished trial for conjuration and similar offences; but under s. 4 of the Act of 1735, any person pretending to practise conjuration is liable to one year's imprisonment upon conviction on indictment. He would, however, more probably be dealt with now as a rogue and a vagabond under s. 4 of the Vagrancy Act, 1824.

The last trial under the Act of James took place in 1712; the accused was convicted but not executed.

Connivance is where a person knows that a wrongful act is being done, and either assists or, being under a duty to interfere, does not interfere to prevent it. Connivance may take the form of fraud or conspiracy (q.v.).

In the law of divorce, connivance is where a person has consented or acquiesced in an adultery committed by his or her wife or husband. It is a defence to a petition for dissolution of marriage presented by the conniving party. See ACCESSORY; CONDONATION; CONSPIRACY.

Consanguinity is relationship by descent, either lineally, as in the case of father and son, or collaterally, by descent from a common ancestor: thus, cousins are related by collateral consanguinity, being descended from the same grandfather or grandmother. The prohibited degrees of consanguinity, namely, those which (apart from recent legislation) prevent marriage between persons so related, are set forth in the Book of Common Prayer. See AFFINITY; NEXT-OF-KIN; HALF BLOOD; COSINAGE.

Conscience Clause. This was the popular title of s. 7 of the Elementary Education Act, 1870. It gave a child the right to attend an elementary school irrespective of any religious observance he did or did not practise, and

whether he did or did not receive any religious instruction; and no child need remain in any school during the time that any religious observance took place or that any religious instruction was given. See now the Education Act, 1921, s. 72. Compare COWPER-TEMPLE CLAUSE; KENYON-SLANEY CLAUSE.

Consecrated Ground. This means ground consecrated for burial.

Consecration. This applies both to persons and things. As regards persons, there is the consecration of a bishop (see CONGÉ D'ELIRE), which must be effected, according to the form given in the Book of Common Prayer, by at least three bishops. As regards things, there is the consecration of churches and churchyards, for which no form is prescribed; but the forms given in Phillimore (2nd ed.), at pp. 1391 and 1397, are, and for over two hundred years have been, in general use. Where an addition is made to an existing churchyard, an instrument of consecration, signed by the bishop, has the same effect as actual consecration of such addition (Consecration of Churchyards Act, 1867, s. 1).

Consensus non concubitus facit matrimonium; et consentire non possunt ante annos nubiles (6 *Co.* 22). (Consent, and not coition, constitutes marriage; and the parties are not able to consent before marriageable years).

If infants intermarry while under the age of discretion, which is fourteen years for a boy and twelve for a girl, the marriage is voidable. If a person above and a person under the age of discretion intermarry, the former, as well as the latter, may elect to avoid the marriage when the latter reaches that age; for in contracts of matrimony both parties must be bound, or neither. At the common law, if the parties be of the age of discretion, no consent but their own is necessary to make their marriage valid. Under the Marriage Acts, the consent of a parent or guardian is usually required for the marriage of an infant who is not a widower or widow; but though a person whose consent is required can take steps to prevent the marriage, yet, if the marriage takes place, the absence of the consent does not invalidate it See MARRIAGE; MARRIAGE ACTS.

Consensus tollit errorem (*Co. Litt.* 126; 2 *Inst.* 123). (Consent takes away error.) That is to say, a party who acquiesces cannot afterwards take advantage of an error. See ACQUIESCENCE.

Consent. Where there is a protector (q.v.) of a settlement of entailed lands (see ESTATE TAIL), the tenant in tail cannot absolutely bar the entail without the consent of the protector; this consent may be contained either in the disentailing assurance or in a separate deed (Fines and Recoveries Act, 1833, s. 42). Where the Lord Chancellor is protector (which happens when the person who would otherwise be protector is a lunatic) the consent consists of an order authorising the disentailment (*ib.* ss. 48, 49).

In civil procedure, an order to which the parties consent cannot be appealed against; but if the consent of any party is obtained by fraud or the like, the order may be set aside: in such a case there is in truth no consent. And a consent may be withdrawn at any time before the order is perfected.

In the law there can be no consent to a battery, and a prize fight is therefore illegal.

Consent is no defence to a charge of unlawful carnal knowledge of a girl under sixteen, or to a charge of indecent assault upon either a boy or a girl under sixteen. See CARNAL KNOWLEDGE; INDECENT ASSAULT.

Consent-rule. This was the instrument by which the real defendant in the old action of ejectment (q.v.) undertook to confess (or admit) the fictitious lease, the fictitious entry, and the fictitious ouster, and relied only on his title to the lands.

Consequential. See DAMAGES.

Conservancy. See CONSERVATORS.

Conservator of the Truce and Safe Conducts (Conservator induciarum et salvorum regis conductuum). An officer appointed by royal letters patent to enquire into all offences committed upon the high seas against the King's truce and safe conducts out of the Cinque Ports. He was appointed during the reigns of Henry V. and Henry VI., when the alternative to actual war with France was a truce or suspension of hostilities, during which French merchants traded to the Cinque Ports. He had as associates two men learned in the law.

Conservators of rivers are commissioners or trustees in whom the control of a certain river is vested by Act of Parliament. It is often a question whether the Act gives the conservators the right of navigation or passage only, or whether it also vests in them the soil of the river and its banks. They generally have power to make locks, towing-paths and similar works, to levy tolls, and to make and enforce bye-laws for regulating the navigation and use of the river.

The conservancy of the river Thames is regulated by the Thames Conservancy Act,

clxxxvii.), which repealed and consolidated the previous Acts.

Conservators of the Peace. Before the present system of appointing justices of the peace was invented, there were peculiar officers appointed by the common law for the maintenance of the public peace. Of these some had this power annexed to other offices held by them; others had it merely by itself. Those that were conservators of the peace *virtute officii* (including the Crown, the Lord Chancellor, the judges of the King's Bench Division, and the coroners and sheriffs within their respective jurisdictions) are still conservators of the peace. The other kind of conservators are superseded by the modern justices of the peace. Alternative assignations were *custodes pacis* and wardens of the peace.

Consideration. The consideration in a contract, conveyance, or other legal transaction is an act or promise by which some right, interest, profit, or benefit accrues to one party, or by which some forbearance, detriment, loss, or responsibility is given, suffered, or undertaken by the other, and in return for which the party who receives the benefit, or for whom the detriment is suffered, promises or conveys something to the other. Thus, in a contract of sale, the money paid or agreed to be paid by the purchaser is the consideration to the vendor, and the property sold is the consideration to the purchaser. So, if a person forgoes a legal right, as by forbearing to take proceedings, that is a detriment to him which may form a consideration for a payment or promise by the person against whom he might have enforced the right. The consideration is said to move from the party who produces the benefit or suffers the detriment of which it consists, and to move to the other party; every other person is said to be a stranger to it. Thus, where A, being indebted to B in £70, made an arrangement with C that C should pay the money to B, and that A in return should convey a house to C, in consideration of which C promised to pay the £70 to B, it was held, in an action brought by B to enforce C's promise, that B was a stranger to the consideration and therefore could not recover. Whether the person receiving the consideration derives any benefit from it, or whether it is adequate, is immaterial; thus, if a man who owns some goods allows another to weigh them, this, being an inconvenience or detriment suffered by him, is a good consideration for the other's promise to give them back in as good condition as before. The doctrine of consideration is of importance in many ways; thus, an action does not lie for breach of a contract not under seal, unless there is a consideration between the parties (see CONTRACT; VOLUNTARY); nor will specific performance of a gratuitous contract be enforced, even if it is under seal; and although no consideration is required for the validity of a complete declaration of trust or a complete transfer of any legal or equitable interest in property, yet an incomplete voluntary gift creates no right which can be enforced. Thus, if a person expresses his intention of voluntarily giving another an interest in property, but does not effect his intention by absolutely parting with it, no trust is created. See also VOLUNTARY.

In dealing with the various kinds of considerations, it will be convenient to assume that in each case the consideration forms part of a contract; that is to say, is in return for a promise, although, as already explained, it may form part of a conveyance.

With reference to its connection with the promise in regard to time, a consideration may be of various kinds.

A past or executed consideration is some act performed, or some value given before the making of the promise. Thus, if A does an act for B's benefit, and B afterwards promises to pay him £50 in return, the consideration for B's promise is executed. The question is of importance, because such a consideration is not sufficient to support the subsequent promise, unless a previous request can be shown or implied by law, as if B requested A to do the act, and afterwards promised him the £50; in such a case the same result is produced as if the promise had preceded the act. See REQUEST; PROMISE; CONTRACT.

The consideration and the promise may be simultaneous; that is, the promise may be given and the consideration executed at the same time; as where A pays B ready money in consideration for B's promise to deliver him goods at a future time.

The consideration may be executory; that is, to be performed at some future time. An executory consideration may be either an act which the promisee is bound to perform (in which case the contract consists of mutual promises; see PROMISE), or simply an act which he may do or not at his own pleasure: thus where A promises B that if he will sell goods to C, A will guarantee payment of the price; here B is not bound to supply goods to C, and until he does so he has no claim on A; but, as soon as he supplies goods to C, that

a person injured thereby a right of action against the conspirators.

In criminal law a conspiracy is a misdemeanour (q.v.); some conspiracies, however, are subject to special punishments, *e.g.*, a conspiracy to murder a person, the maximum punishment for which is ten years' penal servitude (Offences against the Person Act, 1861, s. 4). Combinations among workmen to raise the rate of wages were formerly conspiracies, being in restraint of trade, but this is no longer so (see COMBINATION). It has been said that, perhaps, few things are left so doubtful in the criminal law as the point at which a combination of several persons in a common object becomes unlawful.

Conspiratione, De. A writ which anciently lay against conspirators.

Constable, Lord High. This was in feudal times one of the great officers of State, the office being hereditary. He attended the king on his coronation and on military expeditions. In addition to his jurisdiction in the Court of Chivalry (q.v.), the Constable presided at trials by battle (q.v.). The last hereditary holder of the office was Edward Stafford, Duke of Buckingham, upon whose attainder in 1521 the office became forfeited to the Crown. After that date no appointment of a Constable was made, except on the rare occasion of a trial by battle, when a Constable was specially appointed for the particular trial only.

Constables are inferior officers of the peace of various kinds. High constables were appointed at the courts leet of the franchise or hundred over which they presided, or in default of such an appointment, then by the justices at their special sessions. Their duty seems to have been to keep the peace within the hundred: the office has been abolished (High Constables Act, 1869). The principal duty of petty or parish constables (who were appointed by the justices in petty sessions) was the preservation of the peace within their parish or township; they also had assigned to them the service of the summonses and the execution of the warrants of the justices of the peace. In practically every place they have been superseded by the establishment of a county police, who are under the superintendence of a chief constable appointed by the standing joint committee of the county justices and the county council (County Police Act, 1839, ss. 4, 28; County and Borough Police Act, 1856, s. 1; Local Government Act, 1888, s. 9).

In boroughs subject to the Municipal Corporations Act, 1882, the constables are appointed by the watch committee of each borough (s. 191).

Special constables are persons appointed (with or without their consent) by the magistrates to act on particular occasions, as in the case of riots, etc. (see Special Constables Acts, 1831 and 1835; Municipal Corporations Act, 1882, s. 196).

The word "constable" is the English form of the low Latin *constabularius*, from *stabula*, a stable, the first constables having been originally masters of the king's stables and afterwards commanders of troops in time of war or disturbance, especially on the borders of the kingdom.

Constablewick. The area within which a constable has authority to act. Used formerly in connection with high constables and petty constables. See CONSTABLE.

Constat. Formerly this meant a certificate as to matters on record given by the Clerk of the Pipe (q.v.) and the Auditors of the Exchequer (who, like the Clerk of the Pipe, have been long since abolished), for the purpose of certain proceedings in the Exchequer. It also meant the exemplification (q.v.), under the Great Seal of the inrolment, of any letters patent. See INSPEXIMUS.

Constat also means "it appears" but the use of the word, in this meaning, is unusual except in the phrase *non constat* (q.v.).

Constituent is a person who appoints another to do some act for him by power of attorney (q.v.). He is also called a principal (q.v.), the latter being the term which is now generally used.

Constitution. Anciently used as meaning a law or ordinance. See, for instance, CLARENDON, CONSTITUTIONS OF.

Constitutiones tempore posteriores potiores sunt his quæ ipsas præcesserunt (Later laws prevail over those which preceded them.) This is a maxim contained in the Digest 1, 4, 4. For the corresponding maxim of our law see *Leges posteriores*, etc.

Constructio legis non facit injuriam (*Co. Litt.* 183*a*). (The law construes [documents] so as not to work injustice.) This maxim modifies the maxim *Verba cartarum*, etc. (q.v.).

Construction is the process of ascertaining the meaning of a written document. "Construction of law" is a fixed or arbitrary rule, by which a result follows from certain acts or words without reference to the intention of the parties: thus, "if a tenant for life maketh a lease generally, this shall be taken by construction of law an estate for his own life that

made the lease; for if it should be a lease for the life of the lessee, it should be a wrong to him in the reversion." Sometimes, however, "construction of law" simply means "implication": thus, said Coke, "if I grant to you, that you and your heires, or the heires of your body, shall distreine for a rent of forty shillings within my mannor of S., this by construction in law shall amount to a grant of a rent out of my mannor of S. in fee simple or fee tail." See IMPLICATION.

Constructive denotes that a right, liability or status has been created by the law without reference to the intention of the parties, as in the case of a constructive trust or constructive notice (see NOTICE; TRUST), or that a transaction or operation has not really taken place, but that something equivalent has. Thus, where delivery of goods is required, if the goods "be ponderous and incapable of being handed over from one to another, there need not be an actual delivery, but it may be done by that which is tantamount, for instance, by the delivery of the key of the warehouse in which goods are lodged, or of some other indicia of property, such as the bill of lading." This is called constructive delivery. So a chattel not fixed to land is sometimes for certain purposes considered as being annexed to it; and thus it was held so far back as 1614, where a miller "takes the millstone out of the mill, to the intent to pick it to grind the better, although it is actually severed from the mill, yet it remains parcel of the mill as if it had always been lying upon the other stone, and by consequence, by lease or conveyance of the mill, shall pass with it." This is called constructive annexation. See IMPLIED; QUASI-CONTRACT.

Constructive Fraud. See FRAUD.

Constructive Loss. See LOSS.

Constructive Notice. See NOTICE.

Constructive Trust. See TRUST.

Consuetudinarius. Anciently this meant a book setting out the customs of abbeys and monasteries.

Consuetudines Cantiæ. (The Customs of Kent.) A declaratory enactment, printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 223), s.v. *Statutes of Uncertain Date*. It is not in the *Statutes at Large*. The English version of the statute (which of course was in barbarous French (q.v.)) concludes as follows:—"These be the Usages of Gavelkinde and of Gavelkinde Men in Kent, which were before the Conquest, and at the Conquest and ever since till now." It is attributed to the reign of Edward I. The most important of the customs were those as to the inheritance of land (see GAVELKIND) and as to escheat. There was no escheat of gavelkind lands in case of felony.

Consuetudines et Assise de Foresta. (The Customs and Assise of the Forest.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 213), s.v. *Statutes of Uncertain Date*. It is quoted by Manwood as of 6 Edw. I.

Consuetudinibus et Serviciis. A writ of right close (q.v.), returnable in the old Court of Common Pleas down to 1833, against a tenant of a manor in ancient demesne (q.v.) who had "deforced" his lord of rent or services.

Consuetudo. "This word *consuetudo* hath in law divers significations: (1) For the common law, as *consuetudo Angliæ*; (2) for statute law, as *contra consuetudinem communi concilio regni editam*; (3) for particular customs, as gavelkind, borough English and the like; (4) for rents, services, etc., due to the lord, as *consuetudines et servitia*; (5) for customs, tributes or impositions, as *de novis consuetudinibus levatis in regno, sive in terra, sive in aqua*; (6) subsidies or customs granted by common consent, that is, by authority of Parliament, *pro bono publico*; and these be the *antiquæ et rectæ consuetudines* intended by" (2 *Inst.* 58) Magna Carta.

Consuetudo debet esse certa; nam incerta pro nullis habentur (A custom should be certain, for uncertain things are held as nothing). This maxim is merely a Latinized version of the fifth of the nine rules as to customs which are set out in Blackstone (*Introd.* s. 3).

Consuetudo est altera lex (4 *Rep.* 21). (A custom has the force of law)—where the custom applies.

Consuetudo est optimus interpres legum (2 *Inst.* 18). (Custom is the best interpreter of the laws.) See OPTIMUS LEGUM, ETC.

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis (*Jenk. Cent.* 273). (Custom and common usage overcome the unwritten law, if it be special; and interpret the written law if it be general.) This, according to Jenkins, was in part the basis of the decision of all the judges when they decided—see 4 *Rep.* 77*a*—that the Common Council could, without a vote of the freemen, elect the magistrates of the city of London; but the earlier words *Ex diuturnitate tempore omnia presumuntur esse solemniter acta* (It has been done for so long that it is

presumed to be done in a proper way) seem to give the real ground of the decision.

Consuetudo ex certa causa rationabili usitata privat communem legem (*Co. Litt.* 113*a*). (A custom grounded on a certain cause reasonably applied supersedes the common law.) Instances are the Customs of Kent (see CONSUETUDINES CANTIÆ) and Borough English (q.v.).

Consuetudo, licet sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati (4 *Rep.* 18). (A custom, though it be of great authority, should never, however, be prejudicial to manifest truth.) This maxim would appear to have been enunciated by the King's Bench as a ground for refusing to allow a plaintiff to maintain in that Court an action in which he sued the defendant for calling his wife a whore in London.

Consuetudo neque injuria oriri neque tolli potest (*Lofft*, 340). (No custom can be either established or abrogated by an unlawful act.)

Consuetudo regni Angliæ est lex Angliæ (*Jenk. Cent.* 119). (The custom of England is the law of England.) Compare CONSUETUDO EST ALTERA LEX.

Consuetudo semel reprobata non potest amplius induci (*Dav.* 33). (Once a custom has been disallowed it cannot be again set up.)

Consuetudo vincit communem legem (4 *Rep.* 21). (A custom overrides the common law)—where the custom exists.

Consuls are a class of diplomatic agents or representatives of a foreign country. Their customary functions are to give advice and assistance to citizens of the state they represent, and to uphold their interests by due representations in the proper quarter. They certify and attest acts and documents (see EXEQUATUR); act as commissioners for oaths (Commissioners for Oaths Act, 1889, s. 6; Commissioners for Oaths Act, 1891, s. 2), perform many duties in connection with merchant shipping, and can in certain conditions celebrate marriages (see MARRIAGE ACTS). In Mahommedan countries our consuls occupy a *quasi*-diplomatic position. In countries with which this country has concluded capitulations (q.v.) consuls, or consular officers, exercise a jurisdiction, depending upon the capitulation in question. See FOREIGN JURISDICTION.

Consuls are now of various kinds, there being (1) agents and consuls-general, and commissioners and consuls-general; (2) consuls-general; (3) consuls; (4) vice-consuls.

Consultation is a writ whereby a cause which has been wrongfully removed by prohibition out of an ecclesiastical court to a temporal court is returned to the ecclesiastical court. Consultation also signifies a meeting between counsel to discuss a question or to settle a document. See CONFERENCE.

Consultative Councils. The Ministry of Health Act, 1919, s. 4 (1), empowers the King "by Order in Council to establish consultative councils in England and Wales [see MONMOUTHSHIRE] for giving, in accordance with the provisions of the Order, advice and assistance to the Minister [of Health] in connection with such matters affecting or incidental to the health of the people as may be referred to in such Order."

Contango. In the law of the Stock Exchange this means a percentage paid by a buyer of stock, of which delivery is to be taken on a certain date, for being allowed to delay taking delivery until some other date. Compare BACKWARDATION.

Contemnor; Contempt. Contempt of Court is where a person who is a party to a proceeding in a Superior Court of Record fails to comply with an order made against him or an undertaking given by him, or where a person, whether a party to a proceeding or not, does any act which may tend to hinder the course of justice or show disrespect to the Court's authority. Thus it is a contempt of Court to attempt by threats to induce a judicial officer to depart from the course of his judicial duties; to attempt to prevent a party from conducting his case in a proper manner; or to publish, while a cause is pending, comments upon the evidence which are calculated to injure the parties' cases, or to create ill-feeling against the witnesses. It is also a contempt to remove a ward of Court from the custody of the person with whom such ward has been residing under the authority of the Court, or to marry a ward of Court without the sanction of the Court. A person committing a contempt of Court is called a contemnor. Contempt of Court is an offence punishable by fine or imprisonment or both. (See ATTACHMENT; COMMITTAL.) Moreover, where a party to a proceeding is guilty of contempt of Court, he cannot, as a general rule, make any application to the Court while he is in contempt, unless it is required for the purpose of his defence. The contemnor is said to clear or purge his contempt when he expresses his contrition and submits himself to the Court.

Inferior courts of record, such as Quarter Sessions and the Mayor's Court, have jurisdiction only with regard to contempt committed in the presence of the Court: the County Court,

which also is an inferior court of record, has jurisdiction only in contempts coming within the County Courts Act, 1888, s. 162: and Courts of Summary Jurisdiction, which are not courts of record, would appear to have no means of dealing with contempt beyond an order for the removal of the offending person from Court.

Contemporanea expositio est optima et fortissima in lege (2 *Inst.* 11). (A contemporaneous exposition is the best and strongest in law): or, to put it less literally but more plainly, the best way to construe a document is to read it as it would have read when it was made.

Contempt of Parliament. Whatever obstructs or tends to obstruct the due course of proceeding of either House of Parliament, or grossly reflects on the character of a member of either House, or imputes to him what it would be a libel to impute to an ordinary person, is a contempt of Parliament, and thereby breach of privilege. Commitment with or without fine was the ordinary punishment inflicted when Parliament was more accustomed than it now is to deal with contempt; but a libel on either House may also be dealt with by prosecution in the Criminal Courts.

Contenement. The English rendering of *contenementum*. That word is used by Glanville (*De Leg. Angliæ*, ix., 8) in 1190 and in Magna Carta (c. 20) in 1215, apparently as meaning the land held by a feudal tenant. Later it came to be used in the sense attributed to it by Coke (2 *Inst.* 28): "the countenance which he has together with and by reason of his freehold."

Contentious. Probate business is divided into contentious and non-contentious, the former including actions for proving a will in solemn form or revoking a probate already granted, while the non-contentious business consists of the grant of probates and letters of administration in common form. See GRANT; PROBATE; WARNING.

Contestation of Suit, in an ecclesiastical cause, is that stage of the suit which is reached when the defendant has answered the libel by giving in an allegation (q.v.). If he confesses the libel, he is said to contest the suit affirmatively: if he denies it, he is said to contest the suit negatively, or he may give a qualified affirmative or negative by confessing the whole or part of the libel and adding other facts. See CONFESSION AND AVOIDANCE.

The term is a translation of *litis contestatio*, and is taken from the Roman law.

Contingency; Contingent. An estate, interest, right, liability, or obligation is said to be contingent when its existence depends on an uncertain event, which is called a contingency. Thus, if A. guarantees B. the payment of a sum by C. the right of B. to receive, and the liability of A. to pay, the amount guaranteed, are contingent on the default of the principal debtor, C. The term is chiefly used in conveyancing as applied to remainders (q.v.). Where an estate is limited with substitutionary or alternative contingent remainders (as to A. for life, and if he should leave issue male, then to such issue male in fee, but if he should die without issue male then to B. in fee), this is called a contingency with a double aspect.

Continual Claim. Under the old law, if a man had a right of entry on land he might prevent this right from being tolled or taken away by the person in possession dying seised of the land, if he made "continual claim" to the land, that is, if at intervals of a year and a day he either entered on the land, or, in case of threatened violence, went as near the land as he could and by word claimed the land to be his. The result of making continual claim was that if the person seised died within a year and a day after the claim, the claimant could enter on the heir, instead of being put to his action.

The doctrine of continual claim was abolished by the Real Property Limitation Act, 1833, ss. 10, 11 See ENTRY.

Continuance. In the old common law practice, after issue or demurrer was joined in an action, as well as in some of the previous stages of the proceedings, a day was from time to time given and entered on the record for the parties to appear. The giving of this day was called a continuance, because thereby the proceedings were continued without interruption from one adjournment to another. The entry of continuances was abolished in 1833. See PUIS DARREIN CONTINUANCE; NOTICE OF TRIAL; MISCONTINUANCE.

Continuando. In an action of trespass before the Judicature Acts, when the trespass was of a continuing nature (e.g., spoiling or consuming a man's herbage with cattle), the declaration might allege the injury to have been committed by continuation from one given day to another, instead of the plaintiff being compelled to bring separate actions for each day's separate offence: this was called laying the action with a *continuando*.

Continuation Clause. The Stamp Act, 1891, s. 93 (2), provides that "no policy of sea

insurance made for time shall be made for any period exceeding twelve months": but now the Finance Act, 1901, s. 11, provides that to a twelve months' policy there may be added a "continuation clause," that is to say, an agreement that if the ship is at sea or the voyage otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be covered until the arrival of the ship or for a reasonable time thereafter not exceeding thirty days.

Continuous Voyage. This is a doctrine propounded by the American Prize Courts during the American Civil War. It is to the effect that goods which would be contraband if carried to an enemy port can be dealt with as contraband even though they are being carried to a neutral port provided that they are intended to be forwarded either by land or by sea from the neutral port to an enemy country. The facilities now afforded for the carriage of goods overland by rail has made this doctrine a necessary part of the law of contraband (q.v.).

Contortionist. See CRUELTY TO CHILDREN.

Contraband of War, in international law, is the name given to such articles as may not be carried by a neutral to a belligerent, because they are calculated to be of direct service to him in carrying on war. The question whether certain goods (other than munitions of war, as to which there is no question) are or are not contraband depends partly on the practice of each nation, and partly on stipulations in treaties. See PRE-EMPTION; CONFISCATION.

Contract Note. The Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 77, defines, and imposes stamp duties on, contract notes; the duties begin at sixpence where the value of the stock or marketable security is over £5 and under £100, and run up to a maximum of £1 where the value exceeds £20,000.

Contract of Sale. The Conveyancing Act, 1881, s. 3, supplementing the provisions of the Vendor and Purchaser Act, 1874, makes certain conditions incident to contracts for the sale of freehold and leasehold interests in land, unless the parties otherwise agree. These conditions consist mainly of provisions which before 1882 were inserted as a matter of course for the protection of the vendor in an ordinary contract of sale, and make it safer to enter into an "open contract" than was formerly the case. (See CONTRACT; TITLE.) The Act also provides for the completion of a contract of sale by the personal representatives of the deceased vendor. See DESCENT.

Contracts are of various kinds.

With reference to the modes of their formation, contracts are generally divided into three kinds: simple or parol contracts, specialty contracts or contracts under seal, and contracts of record.

Simple or parol contracts are of two kinds, according as they arise from agreement between the parties, or from implication of law.

A simple contract arising from agreement is where two (or more) persons agree that one of them is to do or not to do some particular thing in consideration of something done or to be done by the other. "Contract" therefore differs from "agreement" in the primary sense of that word in including, in addition to the unity of intention and the juridical nature of the subject-matter constituting a simple agreement, the incidents of one of the parties being bound to a future performance or forbearance, and of the other party doing or agreeing to do something in return. On the side of the party so bound to a future performance or forbearance, the expression of his willingness or intention to do it is called a promise (q.v.) and the performance or forbearance done or promised by the other party is called the consideration for his promise. Thus, if A. agrees with B. that he will sell B. goods, and B. pays him £5 in respect of them, this is a contract of sale: there is a unity of intention between the parties: A. promises to deliver the goods to B. in consideration of B.'s paying him £5. See PROMISE; REQUEST; CONSIDERATION.

Simple contracts created by agreement are divided, according to the manner in which the agreement appears, into express and implied. Thus, if A. says to B., "Will you sell me your horse for £50?" and B. says, "I will," this is an express contract; but if I order goods of a tradesman without promising to pay for them, my contract to do so is implied. (See EXPRESS; IMPLIED.) "Implied contracts" must not be confounded with "contracts implied in law" (*infra*), although the terms are sometimes used interchangeably.

Simple contracts are also divisible into contracts in writing and verbal contracts. Contracts are put into writing either voluntarily, or in pursuance of a rule of law, as in the case of bills of exchange and contracts falling within the Statute of Frauds (q.v.) and Tenterden's Act (q.v.). In either case the writing is the only admissible evidence of the contract, although extrinsic evidence is admissible for various purposes, e.g. to identify the parties and the subject-matter of the contract, or to show that it was made subject to usages of trade, etc.

Simple contracts arising independently of agreement, or contracts implied in law, exist in certain cases where an obligation is created by law for the purpose of setting the parties right —where one of them has suffered loss by doing something for the benefit of the other, or where one of them has wrongfully or by accident gained an advantage over the other. The following are the most important examples:— If A., being compelled by law, has paid money which B. is ultimately liable to pay, A. may recover it from B. under an implied contract to repay it; as if an executor has been compelled to pay legacy duty for which the legatee is ultimately liable. This is called an action for money paid by the plaintiff for the use of the defendant at his request. Where a person does something for another without having been requested by him to do it, and the latter adopts and takes the benefit of the act, the law implies a contract by him to pay the reasonable value of the other's services; this is called acceptance of an executed consideration. If A. wrongfully takes goods from B. and sells them, or has obtained money from B. by fraud, or by B.'s mistake or the like, B. may sue A. for the amount on an implied contract by A. to pay it to him; this is called an action for money had and received by the defendant for the use of the plaintiff. These forms of action seem to have been invented partly to give a remedy which would not otherwise have been available at common law, partly because the procedure in an action of assumpsit (q.v.) was often more convenient than that in an action of debt or tort.

A contract under seal, or specialty contract, is created by the execution of a deed binding the party or parties executing it to a future act or forbearance. (See DEED.) Such a contract necessarily involves the element of agreement, but it derives its legal effect solely from the formality of sealing and delivery, and not from the mere fact of agreement; it also involves the element of a promise (as opposed to a conveyance, appointment, etc.), and in these two points a contract under seal resembles a simple contract, but they differ in the important respect that no consideration is required to give validity to a contract under seal as between the parties to it. (See CONSIDERATION.) As regards its effects also, a contract under seal differs in some respects from a simple contract. See DEBT; COVENANT; ESTOPPEL; LIMITATION OF ACTIONS; MERGER.

Contracts of record are not really contracts at all, but are transactions which, being entered on the records of certain Courts called Courts of Record, are conclusive proof of the facts thereby appearing, and could formerly be enforced by action of law as if they had been put in the shape of a contract. They consist of judgments, recognizances and statutes staple. See those titles: also DEBT; WARRANT OF ATTORNEY; COGNOVIT; MERGER; LIMITATION OF ACTIONS.

With reference to their nature, contracts are divisible into the following kinds:—

A personal contract is one which depends upon the existence, or the personal qualities, skill or services of one of the parties: such as a contract of marriage, or a contract to paint a picture. It follows from the nature of a personal contract that it cannot be assigned, and that it is discharged by the death of the party on whose personality it is founded.

A continuing contract is one for the performance of several acts from time to time: thus, a contract to maintain and repair railway waggons for seven years is a continuing contract.

When a contract has been performed by both parties, it is said to be executed, or when it has been performed by one of the parties, it is executed as far as he is concerned, but so long as something remains to be done by one of the parties, it is said to be executory as regards him. When applied to contracts of sale, "executed" and "executory" have peculiar meanings. See SALE.

With reference to their objects, contracts are of innumerable varieties,—such as contracts of agency, service, works, insurance, guarantee, contracts of debt (that is, contracts for the payment in future of money), and contracts of sale, that is, contracts by which one person agrees to sell, and the other to buy, certain property. (See SALE.) In the case of a sale of goods, the contract is generally restricted to the question of price, quality and time of delivery; but in the case of land, leaseholds, etc., the contract generally contains elaborate provisions (principally in the interest of the vendor) as to the investigation of the title, the delivery of the abstract and requisitions (q.v.), and the power of the vendor to rescind the contract if he cannot show a good title. When a person enters into a contract for the sale of land or leaseholds without making these stipulations, he is said to have entered into an open contract. See also VENDORS AND PURCHASERS; NECESSARIES; RESTRAINT OF MARRIAGE; RESTRAINT OF TRADE.

"Contract" is also sometimes used in a sense similar to that of "agreement" in its primary sense, namely, the common intention of two persons with regard to a certain subject. Thus the phrase "contract of sale" frequently

denotes the ordinary transaction of A. delivering goods to B. and B. paying the price to A. at the same instant. Here there is no true contract, for "contract" implies a promise to be performed at a future time (*supra*). It is in fact merely a sale, not a contract of sale. See SALE; DISCHARGE; RELEASE; PERFORMANCE; SATISFACTION; DIVISIBLE CONTRACT.

Contra formam collationis. Before the dissolution of the monasteries this was a writ which lay against the abbot of a monastery, where lands had been given to the monastery for charitable purposes and had been alienated for other purposes. The writ was then available to the donor or his heirs for the recovery of the lands. It was based on the Statute of Westminster II., c. 41.

Contra formam feoffamenti. Anciently this was a writ which lay for the heir of a tenant of lands held under a charter of feoffment (q.v.), stipulating for certain suits and services, where the heir was afterwards distrained for services other than those specified in the charter.

Contra formam statuti. At common law it was necessary that an indictment for an offence created by statute, or dealt with by statute, should, after describing the offence in the terms of the statute, conclude with the words "against the form of the statute [or statutes] in that case made and provided." The Criminal Law Act, 1826, s. 24, made it immaterial whether the word "statute" or the word "statutes" was used, but still left it obligatory to use one word or the other. The Criminal Procedure Act, 1851, s. 24, while not expressly enacting that the words need not be used, had the effect of making them wholly superfluous, though the conservatism of draughtsmen resulted in their being used even after that Act was passed. Now, however, the Indictments Act, 1915, ss. 1, 2 (2), Sched. I., r. 4 (3), provides that the indictment shall "describe the offence shortly in popular language, avoiding as far as possible the use of technical terms . . . and if the offence is one created by statute, shall contain a reference to the section of the statute creating the offence," and the use of the words "against the form of the statute" has finally ceased.

Contramandatio placiti. A countermanding of plea. In the reign of Henry I. it meant giving a defendant further time to answer. See *Leg. Hen.* 1, c. 59.

Contramandatum. This, in the reign of Henry I., seems to have been something analogous to the present application to have a pleading struck out under Ord. 25, r. 4, as disclosing no reasonable cause of action. See *Leg. Hen.* 1, c. 59.

Contra negantem principia non est disputandum (*Co. Litt.* 343). (You cannot argue with a man who refuses to admit elementary principles.)

Contra non valentem agere nulla currit præscriptio (No prescription runs against a person unable to bring an action): and so in the case of a debt time begins to run against a creditor only as from the date upon which he had a right to institute proceedings.

Contra pacem. At common law, it was necessary to allege in an indictment that the offence was committed *contra pacem Domini Regis* (against the peace of our Lord the King): but the Criminal Procedure Act, 1851, s. 24, made this unnecessary, and the Indictments Act, 1915 (see CONTRA FORMAM STATUTI), makes it improper.

Contrectatio rei alienæ, animo furandi, est furtum (*Jenk. Cent.* 132). (The appropriation of property not one's own, with an intention to steal, is theft.)

Contribution. Where one person has sustained some loss which would have fallen upon others as well as upon himself, if it had not been diverted from them at his expense, or where a payment has been made out of one property when it might have been divided between it and another property, payment by the other persons or property of the proportion which they or it ought originally to have borne, is called contribution. The commonest instance of contribution by persons occurs in the case of co-sureties: thus if A., B. and C. make themselves liable for D. to the extent of £300, and A. is compelled to pay the whole amount, he is entitled to payment (or contribution) of £100 from B. and £100 from C. There is no right of contribution between wrongdoers. (See CONTRIBUTORY.) The other kind of contribution frequently occurs in the administration of the assets of a deceased person: thus if a testator directs his real estate (value £10,000) and his personal estate (value £5,000) to be applied in payment of his debts, which amount to £1,500, each contributes rateably, *i.e.*, £1,000 is paid out of the real estate and £500 out of the personalty. So if several properties are subject to one mortgage, and on the death of the mortgagor they devolve on different persons, each property must contribute rateably towards payment of the mortgage debt according to its value.

A similar kind of contribution occurs in the

case of general average, where several persons have to contribute, and the amount of each person's contribution depends on the value of the goods belonging to him in the ship. See AVERAGE; ADJUSTMENT; CONTRIBUTORY; MARSHALLING; EXONERATION; QUASI-CONTRACT; SUBROGATION.

Contributione facienda. Where tenants in common were bound to do some act, and one of them was left by the others to do that act, then this writ formerly lay for him against the others to compel them to make contribution. The remedy now would be by an action for money paid.

Contributive Value. Where an undertaking, such as a railway or a canal, has property in many parishes, part of the undertaking in one particular parish may be carried on at a loss as regards that particular parish and yet be a source of profit to the undertaking as a whole. If the parochial principle of rating is adhered to, such part will have no rateable value; whereas if the principle of contributive value be adopted, such part will have a rateable value. The question as to whether the principle of contributive value applies arises chiefly in connection with branch lines which act as "feeders" to the railway system of which they form part. For the many not easily reconcileable decisions on the point, see *Ryde on Rating*.

Contributory is a person who, on the winding-up of a company, is bound to contribute to its assets for the payment of its debts (Companies (Consolidation) Act, 1908, s. 124). One of the first duties of the Court or the liquidators after the winding-up has been definitely commenced is to settle the list of contributories, a process which involves that of ascertaining the liability of persons included in it. That liability may be enforced in certain cases by arrest: see s. 176.

Persons who are contributories in their own right are distinguished from those who are contributories as the representatives of or as being liable for the debts of others—such as the executors, trustees in bankruptcy, etc., of contributories in their own right.

Under the Companies (Consolidation) Act, 1908, ss. 24, 123, as regards companies formed under the Act, every person who was a member at the commencement of the winding-up, and every person who had been a member within one year prior to that time, is liable to be put on the list of contributories, but no past member is liable to contribute in respect of any debts of the company contracted after the time at which he ceased to be a member, nor is he liable to contribute at all unless the existing members are unable to satisfy the contributions required of them. In order to carry out these provisions the list of contributories is divided into the A and B lists. See A AND B LISTS; CALL; BALANCE ORDER.

Contributory Negligence. See NEGLIGENCE.

Controller. See COMPTROLLER; COUNTER ROLL.

Contumace capiendo, De ("for arresting a contumacious person") is a writ which is or might be issued on a significavit (q.v.) from an Ecclesiastical Court for the enforcement of a decree pronounced by that Court. It issued formerly from the Petty Bag Office (q.v.), but now it issues from the Crown Office Department of the Central Office. It is addressed to the sheriff, and directs the arrest of the person who refuses to obey the decree. As to the writ see, further, the Ecclesiastical Courts Act, 1813, s. 1; the Ecclesiastical Courts Contempt Act, 1832, s. 1, and the Ecclesiastical Courts Act, 1840. See also CONTUMACY.

Contumacy is where any person having been duly cited to appear in an Ecclesiastical Court, or required to comply with the lawful order of any such Court, neglects or refuses to appear, or neglects or refuses to obey the order, or where any person commits a contempt in the face of the Court. (See the Ecclesiastical Courts Act, 1813.) Contumacy is punishable by imprisonment. (See CONTUMACE SAPIENDO, DE.) Upon such contumacy as consists in the non-payment of money payment whereof has been ordered by an Ecclesiastical Court, sequestration (q.v.) may be issued out of the High Court against the real and personal estate of the contumacious person (Ecclesiastical Courts Act, 1840).

Conusance. The primary meaning of conusance is acknowledgment. Thus, a fine *sur conusance de droit* was a fine founded on an acknowledgment of right (see FINE); so, in an action of replevin the conusance was a plea by which the defendant admitted that he took the goods for which the action was brought. See REPLEVIN.

Conusance also signifies jurisdiction. "Conusance of pleas" is a franchise granted to an inferior Court, giving it exclusive jurisdiction to entertain certain proceedings. Thus, the University of Oxford still has, and the University of Cambridge formerly had, conusance in certain personal actions. (See COURTS OF THE UNIVERSITIES.) When an action for a cause within the conusance of an inferior Court of record is brought in a superior Court,

the inferior Court may put forward a claim of conusance, and, if the claim is allowed, the action is remitted to the inferior Court. In the High Court the claim is made by motion.

Conusance sometimes means judicial notice. See NOTICE.

Conventicle Act. The popular title of the statute 22 Car. 2, c. 1, which aimed at the suppression of conventicles or meetings for religious services other than those of the Church of England.

Conventione, De. A writ, also known as a writ of covenant, which formerly lay for the breach of any covenant.

Conventio privatorum non potest publico juri derogare (*Wing.* 201). (No private persons can make an agreement between themselves which derogates from the rights of the public.)

Conversion. I. In equity, conversion is the operation of changing the nature of property; it is either actual or constructive. Actual conversion is the act of converting land or other property into money by selling it, or of converting money into land by buying land with it. Conversion in this sense is frequently directed by wills and settlements, or ordered by a Court in administering an estate.

Constructive conversion is a fictitious conversion, which is assumed in certain cases to have taken place in order to carry out the intention of the parties. The constructive or equitable conversion of land into money (realty into personalty), and *vice versa*, takes place when an actual conversion has been directed or agreed to, but not actually carried out. The effect of this doctrine is that land directed to be sold is treated and devolves as if it were personalty, and *vice versa*; thus, if land is directed by a will to be sold and the proceeds to be paid to A., and A. dies before the sale, the land goes to A.'s personal and not to his real representatives. But where the trust or power of sale is discretionary or conditional, no constructive conversion takes place, and the property retains its original character until it is actually converted. Constructive conversion takes place from the death of the testator in the case of a will, and in the case of a deed from the date of execution. Sometimes a double conversion, as land into money and the money again into land, is directed. In this case the property is to be considered, in general, as in that state in which it is ultimately to be converted; in the case supposed, therefore, the property would be treated as land. "Conversion out and out," or conversion to all intents, is where the testator meant to give the produce of real estate the quality of personalty to all intents, that is, in any event, as opposed to conversion for the purposes of the will only; the distinction is of importance in the event of some of the dispositions of the property failing by lapse or otherwise. Thus, if a testator simply gives the proceeds of real estate to several legatees, and one of them dies in the testator's lifetime, his share goes to the testator's heir-at-law, while if the testator shows an intention that the real estate is to be considered as personalty, whether the expressed purposes of his will take effect or not, then the conversion is "out and out," and any lapsed share goes to the testator's next-of-kin; see further as to this doctrine under title RESULT.

Retrospective conversion takes place where a person (e.g. a lessee) has an option of purchasing the land, and declares his option after the death of the owner (lessor); here the purchase-money goes to the personal representatives of the lessor, as if the option had been exercised during his lifetime.

II. At common law, conversion is that tort which is committed by a person who deals with chattels not belonging to him in a manner which is inconsistent with the rights of the lawful owner. Thus if a person in possession of goods belonging to another wrongfully refuses to deliver them up to him, or sells, disposes of, parts with or destroys them, he is guilty of a conversion. The remedy of the person injured is either by recaption (q.v.) or by action; if he merely claims damages, the judgment vests the property of the goods in the defendant; but the plaintiff may if he likes claim a return of the goods in specie, and a judgment to that effect is enforceable by writs of delivery, attachment and sequestration (Ord. 42, r. 6). See TROVER; DETINUE.

III. In the law of bankruptcy it is competent for solvent partners to make any arrangement which they think proper with respect either to the joint property of the firm or the separate property of the persons constituting it, and to alter the character of the property so as to convert joint into separate property, and *vice versa*; and every such agreement, if made *bona fide*, will bind their creditors, and in the event of bankruptcy, the property will be distributable as joint or separate estate according to the character which it then bears as between the partners themselves. (See JOINT.) Joint debts also may be converted into separate debts, and *vice versa*; thus if an action is brought against one partner alone for a joint debt, and judgment is obtained before the bankruptcy, the joint debt will be converted into a separate debt against that partner.

Convey; Conveyance. In the widest sense of the word a conveyance is a mode by which property is conveyed or voluntarily transferred from one person to another by means of a written instrument and other formalities. It also signifies the instrument itself. Conveyances are of three classes,—by matter of record, by matter *in pais*, and by special custom.

Conveyances by matter of record are such as are substantiated by a court of record. The only examples of this class in use at the present day are royal grants and vesting orders (q.v.). Fines and recoveries (q.v.) belonged to this class before their abolition.

Conveyances by matter *in pais* are such as only require the act or consent of the parties themselves, testified by the proper formalities. They are of three kinds, according as they operate by the common law, by the Statute of Uses, or under certain modern Acts of Parliament.

(i) Conveyances at common law are said to be original or primary when they transfer the property without reference to a previous conveyance, and derivative or secondary when they follow a previous conveyance and take effect with reference to it. To the former class belong conveyances by feoffment, gift (of estates tail), grant (of incorporeal hereditaments), lease, exchange, partition and assignment; to the latter class belong conveyances by confirmation, release, surrender and defeazance. See the various titles.

(ii) Conveyances under the Statute of Uses (q.v.) are those which derive their force from the stat. 27 Hen. 8, by which the use or beneficial interest in land is in certain cases converted in the legal possession and ownership. Conveyances of this kind are said to operate with transmutation of possession, where the possession of the land is first transferred by a conveyance taking effect independently of the Statute of Uses, and the statute then transfers the possession to the *cestui que use*. To this class belong the obsolete feoffment to uses and the modern deed of grant to uses, in each of which the land is conveyed to a feoffee or grantee, and either by the same or by a separate instrument (whether contemporaneous or subsequent) uses are declared in favour of other persons to whom the legal possession and ownership are transferred by force of the statute. Examples of such conveyances occur in a strict settlement, in which, down to 1883, power was usually given to the tenant for life (the husband) to grant leases for twenty-one years. This was done by conveying the land to certain persons (called the "trustees of the powers") to the uses of the settlement, and by giving the tenant for life a power to appoint the land by way of lease for any term not exceeding twenty-one years. (See POWER; "LEAD.") Conveyances are said to operate without transmutation of possession where nothing but the use passes until the statute takes effect; these include the bargain and sale, the covenant to stand seised, and the lease and release. See those titles.

(iii) Conveyances operating under modern statutes are releases under the now repealed statute 4 & 5 Vict. c. 21 (see LEASE AND RELEASE); deeds of grant under the Real Property Act, 1845, c. 106; assurances made by married women under the Fines and Recoveries Act, 1833, ss. 77 *et seq.* and under the Married Women's Property Act, 1882; and assurances by tenants for life under the Settled Land Act, 1882. There are also many others.

Conveyances by special custom are employed for alienating and dealing with copyhold lands and such customary estates as are holden in ancient demesne or in manors of a similar nature. The usual method is by surrender followed by admittance. See SURRENDER; ADMITTANCE; GRANT; BARGAIN AND SALE; USE; COVENANT.

In the narrower modern sense, "conveyance" signifies the instrument employed to effectuate an ordinary purchase of freehold land as opposed to settlements, wills, leases, partitions, etc., and "convey" means to effectuate such a purchase. But the words "conveyance" and "convey" have the much wider meanings given to them by the Conveyancing and Law of Property Act, 1881, s. 2 (v), which declares that in that Act "conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement and other assurance, and covenant to surrender, made by deed on a sale, mortgage, demise or settlement of any property, or on any other dealing with or for any property: and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance."

"Conveyance," in the sense of a transfer of property, seems to be a compartively modern term, the old word being "assurance" (q.v.). Coke used "conveyance" as signifying that part of a pleading which serves as an explanation or introduction to the material facts.

Conveyancer; Conveyancing. Conveyancing is that part of the lawyer's business which relates to the alienation and transmission of property and other rights from one person to another, and to the framing of legal docu-

ments intended to create, define, transfer or extinguish rights. It therefore includes the investigation of the title to land, and the preparation of agreements, wills, articles of association, private Acts of Parliament operating as conveyances, and many other instruments, in addition to conveyances properly so called.

"Conveyancer" now generally means a barrister who chiefly devotes himself to the practice of conveyancing or combines it with practice on the Chancery side (see DRAFTSMAN). Formerly it was not unusual for a member of one of the Inns of Court to obtain a certificate allowing him to practise as a conveyancer below the bar, that is, without being called to the bar. But this is practically obsolete, there being now (1922) only one such conveyancer in England. The certificate cannot be issued without the annual permission of the Benchers of the Inn (Solicitors Act, 1860, s. 124). It is issued by the Commissioners of Inland Revenue (*ib.*); expires on each 31st October (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 48 (*a*)); and an annual duty of £9 during the first three years and of £4 10s. afterwards is payable if the conveyancer practises within ten miles of the G.P.O., London, the duties being £6 for the first three years and £3 afterwards if he practices elsewhere in England (*ib.*, s. 1, Sch. I.). Any person, not being a barrister or solicitor, who practises conveyancing without a certificate is liable to a penalty of £50 (*ib.*, s. 44). A certificated conveyancer can sue for his fees.

Conveyancing Counsel. By the Court of Chancery Act, 1852, s. 41, the Lord Chancellor was empowered to appoint not less than six barristers, who had practised as conveyancing counsel for ten years at least, to be conveyancing counsel of the Court of Chancery; and the opinion of any of them might be received and acted on by the Court or by a judge at chambers in the investigation of the title to an estate, or in the settlement of a draft conveyance, mortgage, etc. By the Judicature Act, 1873, s. 77, they were transferred to the Supreme Court. See, with regard to them, Ord. 51, rr. 2, 7, 9-13, Ord. 65, rr. 22, 27 (36).

Convict. Formerly a man was said to be convict when he had been found guilty of treason or felony, but before judgment had been passed on him, after which he was said to be attaint (q.v.). The term "convict" has, however, long had the popular meaning of a man who has been sentenced to death or penal servitude for treason or felony, and this use of the word has been adopted by the Legislature. See the Forfeiture Act, 1870, s. 6.

Conviction is where a person is found guilty of an offence. Convictions are either ordinary or summary. An ordinary conviction takes place in a criminal prosecution by indictment, etc., and may either consist of the prisoner's confession and plea of guilty, or of the verdict of guilty found by a jury. See VERDICT; JUDGMENT; SENTENCE.

A summary conviction is a judgment pronounced by one or more justices of the peace or other magistrates under the authority of a statute giving them criminal or penal jurisdiction—*e.g.*, in cases of assaults. See JURISDICTION; QUASH.

Convocation. This is an assembly of the clergy. There are two Convocations—one for the province of Canterbury, the other for that of York, and each one consists of two houses, of which the archbishop and bishops form the upper house, the lower house consisting of deans, archdeacons, proctors representing the chapters, and proctors representing the parochial clergy. All deans and archdeacons are members of the Convocation of their province, and each chapter sends one proctor; in the province of Canterbury the beneficed parochial clergy in each diocese elect two proctors, while in the province of York the clergy in each archdeaconry elect two proctors.

Convocation is summoned by the archbishop of the province in pursuance of the King's writ.

Formerly the beneficed clergy taxed themselves in convocation, but they have not done so since 1663. Convocation has no power to bind the temporalty, but it seems that it may with the licence or authority of the Crown make constitutions and canons binding on the spirituality, provided they are not against the law of the land or the Crown's prerogative.

The constitution of the Church Assembly (q.v.) expressly declares that the establishment of that body is without prejudice to the powers of Convocation. It would, however, seem probable that in practice the Church Assembly will supersede Convocation.

Convoy consists of one or more ships of war sent by a country in time of war to protect and escort merchant ships belonging to that country. It was formerly a moot point whether neutral merchant vessels sailing with convoy were exempt from search (q.v.), and although the principle of that exemption was recognised at the close of the eighteenth cen-

tury by most of the principal maritime powers, it was denied by Sir William Scott in the case of *The Maria* in 1798. In 1801, however, the principle was adopted by Great Britain, with certain restrictions, in a convention with Russia, but since 1812 Great Britain has refused to admit it.

In the law of marine insurance, warranty to sail with convoy is a stipulation in a policy of insurance on a ship that it will sail with convoy. It implies—(i) a convoy for the whole voyage, (ii) sailing orders from the officer in command of the convoy, and (iii) exertion on the part of the ship insured to keep with the convoy.

Co-operative Building Societies. A society may be formed under the Industrial and Provident Societies Act, 1893, ss. 4, 36, for the purpose of buying and selling land, with power to mortgage, lease or build upon land bought or taken on lease by it. Such societies are sometimes called co-operative building societies.

Coparcener; Coparcenary. Where lands descend on an intestacy to several persons as co-heirs, *e.g.*, at common law to several daughters, or, according to the custom of gavelkind, to several sons, the persons so inheriting are called coparceners or tenants in coparcenary. In the former case they are called in the old books coparceners by the common law, and in the latter case coparceners by the custom.

Coparceners form one heir to their ancestor, and therefore they have one entire freehold in the land in respect of strangers so long as it remains undivided, but, as Coke puts it, "betweene themselves to many purposes they have in judgement of law severall freeholds; for the one of them may infeoffe another of them of her part, and make liverie. And this coparcenarie is not severed or divided by law by the death of any of them; for if one die, her part shall descend to her issue." Coparceners may also convey to one another by deed of release, in the same way as joint tenants. Coparceners could always compel one another to make partition (q.v.). On a partition by agreement, the part allotted to each coparcener in severalty descends in the same way as the undivided share to which he was entitled previously to partition; in other words, the partition does not make the coparceners purchasers of their several shares within the meaning of the Inheritance Act (q.v.). See JOINT TENANCY; TENANCY IN COMMON; SEVERALTY; ESTATE; DESCENT; PARTITION; ENITIA PARS; STATUTUM DE HIBERNIE, etc.

Copartner; Copartnership. See PARTNERSHIP.

Cope. See LOT AND COPE.

Copper Coins, Ancient. The copper coinage originated only in 1660, when the copper halfpenny and farthing were issued. They were replaced during the reign of James II. by tin coins, some of which appeared also during the reign of William and Mary. From 1694 to 1860 halfpennies and farthings, as well as the rarer issues of half-farthings and one-third farthings, were again of copper; from 1797 the copper penny was issued down to 1860: a copper two-pence was issued in 1797; and since 1860 the copper coinage has been superseded by a bronze coinage consisting of pennies, halfpence and farthings and also a rarely seen one-third farthing. The penny of the copper, etc., coinages has always been worth one-twelfth of the current shilling.

Copulatio verborum indicat acceptationem in eodem sensu (*Bac.* iv. 26). (The coupling of words shows that the meaning of the one is to be ascertained from the meaning of the other.) See EJUSDEM GENERIS.

Copy. A copy is a document which is taken or written from another, as opposed to an original. The principal sorts of copies used for the proof of documents are—(1) Exemplifications under the Great Seal; (2) exemplifications of a record under the seal of the Court where the record is; (3) office copies, or copies made by an officer appointed for that purpose and sealed with the seal of the office; (4) examined copies, or copies sworn to be true copies by persons who have compared them with the original, either by one person comparing the copy line for line with the original, or by reading the copy while another person reads the original; (5) copies signed and certified as true by the officer to whose custody the original is entrusted. See CERTIFIED COPY.

Photographic copies of documents in the possession of an adverse party may in a proper case be obtained by order of a master; but such copies, which are obtainable only for the purpose of preparing the case, cannot be produced as evidence of the original documents.

As to the rules governing the admissibility of copies in evidence, see EVIDENCE.

As to tenancy by copy of court roll, or tenancy by copy, as it is called in the old books, see COPYHOLD.

"Copy" in the old writers also signifies

copyright (q.v.). The "right of copy" is the right to reproduce, from Latin *copia*, abundance.

Copyhold; Copyholder. Copyholds, or lands held by copyhold tenure, are lands, forming part of a manor, originally granted by the lord for tenancies at will merely, which however have by immemorial custom become converted into estates independent of the will of the lord in everything but name, and of various degrees of duration, according to the custom of the particular manor. Copyholds are so called because the evidence of the title to such lands consists of copies of the court roll of the manor, a book in which all dealings with the land are entered. (See ROLL.) Since 16th September, 1887, no new copyhold can be created without the consent of the Ministry of Agriculture and Fisheries (Copyhold Act, 1887; Copyhold Act, 1894, s. 81).

All copyhold land is therefore subject to two estates, namely, that of the lord, which is a freehold estate, and that of the tenant, which is a customary estate. (See TENURE; ESTATE.) Except that it gives rise to certain fines (q.v.) and other dues, the estate of the lord is almost purely nominal. See INTEREST.

The following consequences follow from the estate of the copyholder having been originally an estate at will only, and from the freehold being vested in the lord:—(1) That the minerals under and the timber on the land belong to the lord, so that the tenant cannot take them without a licence from the lord, while the lord cannot take them without the consent of the tenant, unless there is a custom enabling him to do so; (2) that all alienations of the tenant's interest in the land must be effected by the intervention of the lord (see GRANT; SURRENDER; ADMITTANCE), to whom a fine is generally payable (see FINE); and (3) that a copyholder cannot lease his land for a longer period than one year without a licence from the lord, unless there is a special custom enabling him to do so.

Subject to these restrictions, the ownership of a copyholder is practically as absolute as that of a freeholder. It is true that he holds his land nominally at the will of the lord, but he also holds it according to the custom of the manor, which overrides the will of the lord; if the tenant aliens or devises the land, or dies intestate, the lord is bound to admit the alienee, devisee or heir as tenant, and if he refuses he can be compelled by mandamus to do so. Copyholds are liable for the debts of the deceased copyholder if he had an estate beyond his own life (Administration of Estates Act, 1833); they are also liable to be taken in execution for his judgment debts under a writ of *elegit* (Judgments Act, 1838, s. 11); and they pass on his bankruptcy to his trustee for the benefit of his creditors (Bankruptcy Act, 1914, ss. 48, 167).

The custom of each manor determines the maximum degree of property which the copyholders may have in their customary tenements. Hence copyholds are generally divided into (a) copyholds of inheritance, which are alienable for an estate of inheritance or any less estate, but not for an estate tail, unless there is a custom to entail in the manor; if there is no such custom then a gift to a man and the heirs of his body will give him a customary estate of fee simple conditional at the common law (see FEE; TAIL): (b) copyholds for lives, which are alienable for one or more lives in a great variety of manners, but for no greater estate; when a copyholder for lives has a tenant right of renewal or of appointing his successor, his estate is almost the same as a customary fee, and he is hence called a quasi-copyholder in fee: (c) copyholds for years, which are alienable for terms of years, renewable or not according to the custom, but for no greater estate. See generally as to estates in copyholds, title ESTATE: also FREEBENCH; GRANT.

As to the rights of the lord to heriots, rents, fines, reliefs, forfeitures, etc., see those titles; also COMMUTATION. As to the enfranchisement of copyholds, see that title: see also ANCIENT DEMESNE: CUSTOMARY FREEHOLDS; DEMESNE; SEIZURE; TENANT BY THE VERGE; VILLENAGE.

Copyholds descend as realty unless there be a special custom such as borough English (q.v.) or gavelkind (q.v.).

Copyhold Commissioners were commissioners appointed under the Copyhold Act, 1841, ss. 1, 2. Their function was to carry into effect that Act; and they were subsequently entrusted with the administration of various subsequent Acts which, like the Act of 1841, had for their principal objects the compulsory commutation of manorial burdens and restrictions (fines, heriots, rights to timber and minerals, etc.), and the compulsory enfranchisement of copyhold lands. See COMMUTATION; ENFRANCHISEMENT.

By the Settled Land Act, 1882, s. 48, they (together with the Tithe and the Inclosure Commissioners) were entitled the Land Commissioners for England. All powers and duties of the Land Commissioners were transferred in 1889 to the Board of Agriculture, which is now the Ministry of Agriculture and Fisheries (q.v.).

Copyright. In the proper sense of the word,

ve right of printing
pies of a published
right of preventing
he infringement of
this right is called piracy (q.v.).

Copyright is of two kinds,—by prerogative and by statute.

The Crown has the exclusive right of publishing certain books, of which the most important are the English translation of the Bible, the statutes, and reports of judicial proceedings. The privilege of publishing the Bible and some other books has been granted by the Crown to the Universities of Oxford and Cambridge. The Crown's copyright is not now enforced.

The right of a subject to prevent others from multiplying copies of a published work (such as a book, painting, engraving, photograph, etc.) is a statutory one which was first created by the statute 8 Anne, c. 19.

The right now depends entirely on the Copyright Act, 1911, which enacts (s. 31) that "no person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force . . ." Up to the passing of this Act there had been a number of statutes dealing with copyright in various kinds of works. The Act of 1911 consolidated and amended the law, and (s. 36 and Sch. II.) repealed all the prior Acts under which copyright existed, leaving in force only two Acts (The Musical (Summary Proceedings) Copyright Act, 1902, and the Musical Copyright Act, 1906) providing for the seizure and destruction of pirated copies of music, and ss. 7 and 8 of the Fine Arts Copyright Act, 1862, which provides for the recovery of penalties for the infringement of copyright in artistic works. The Act of 1911 forms a complete code. Only its main provisions can be noticed here. It provides where and in what works copyright shall exist:—"Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work, if (*a*) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid, and (*b*) in the case of an unpublished work, the author was at the date of the making of the work a British subject, or resident within such parts of His Majesty's dominions as aforesaid; but in no other works, except so far as the protection conferred by this Act is extended by orders in council thereunder, relating to self-governing dominions to which this Act does not extend, and to foreign countries" (s. 1 (1)).

The Act extends throughout His Majesty's dominions, but shall not extend to any self-governing dominion unless put in force therein, with or without modifications, by the local legislature (s. 25), who may afterwards repeal the Act or any part of it (s. 26).

The Act may be extended by Order in Council to British protectorates (s. 28), and this power has been largely used.

The Act defines copyright:—"For the purposes of this Act, copyright means the sole right to produce or reproduce the work, or any substantial part thereof, in any material form whatsoever, to perform, or in the case of a lecture, to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right (*a*) to produce, reproduce, perform or publish any translation of the work; (*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work; (*c*) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work by performance in public or otherwise; (*d*) in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered, and to authorise any such acts as aforesaid" (s. 1 (2)).

The Act extends the periods during which copyright shall exist. Except as otherwise provided by the Act, the period is the life of the author and fifty years after his death; but after the expiration of twenty-five years, or, in the case of a copyright existing at the passing of the Act, thirty years from the death of the author of a published work, any person may publish the work on compliance with the prescribed formalities and on payment of a royalty of ten per cent. to the personal representative of the author (s. 3). In the case of photographs the period is fifty years from the making of the first negative (s. 21). Provision is made for such rights as are to be substituted for rights existing at the commencement of the Act in various works (s. 24, Sch. I.). The Act came into operation on 1st July, 1912 (s. 37).

These extensions of the period of copyright are of great importance. Immediately before the Act the period was, in the case of books, forty-two years or the author's life and seven years—whichever was the longer; in the case of paintings, the author's life and seven years after; in the case of engravings, twenty-eight years from first publication; and in the case of sculptures, fourteen years from first publication, with a further fourteen years if the sculptor was alive at the end of the first fourteen years.

No registration at Stationers' Hall is now necessary.

The Act may by Order in Council be extended to works published in foreign countries which make adequate provision for the protection of works entitled to copyright under the Act (s. 29), and to the works of persons not coming within s. 1 (1) *supra* (*ib.*).

Coraage. This word never existed except as an erroneous form of "cornage." But Blount, Cowel and Jacob all treat it as having a legitimate existence: and then proceed to say that it must have been an imposition of certain measures of wheat, "for *corus tritici* is a measure of wheat." Of such stuff were the old etymologies made.

Coram non judice (before one who is not the judge) is an expression used where a Court proceeds in a matter beyond its jurisdiction. The term was generally used in reference to proceedings before justices of the peace, the general rule being that if the want of jurisdiction appeared on the face of the proceedings they were void, and no act done in pursuance of them could be justified; but this rule has been modified by the Justices Protection Act, 1848, which (see s. 2) requires the conviction or order to be quashed before an action can be brought.

Cord. A cord of wood contains one hundred and twenty-eight cubic feet, being eight feet long, four feet broad, and four feet high. This measure is not now recognised by the law.

Co-respondent. Where a husband brings a suit against his wife charging her with adultery, the alleged adulterer must as a rule be made a party to the petition as a co-respondent (Matrimonial Causes Act, 1857, s. 28). If the adultery is proved the Court may order him to pay damages to the husband (*ib.* s. 33). See ADULTERY; DISSOLUTION OF MARRIAGE.

Corium. The hide or skin. Anciently when a man was condemned to be whipped he was said *corium forisfaccre* (to forfeit his skin) or *corium perdere* (to lose his skin), and if he compounded for the whipping he was said *corium redimere* (to redeem his skin).

Cornage was a tenure by which land might formerly be held. Littleton says: "It is said that in the marches of Scotland some hold of the king by cornage, that is to say, to winde a horne, to give men of the countrie warning, when they heare that the Scots or other enemies are come or will enter into England; which service is grand serjeanty. But if any tenant hold of any other lord than of the king by such service of cornage, this is not grand serjeanty, but it is knight's service, . . . for none may hold by grand serjeanty but of the king only."

Cornage was abolished by the statute 12 Car. 2, c. 24, certainly so far as it constituted knight's service, and apparently also in the case of grand serjeanty, because the service of cornage could hardly be called an honorary service, which is the only kind of service excepted from the Act. (See TENURE; GRAND SERJEANTY.) The manor of Pusey in Berkshire was held by cornage under, it is said, a grant from Canute; and in 1684 the horn kept for the purpose of performing the services—it is inscribed "*Pecote this horne to hold buy thy land*"—was held to be an heirloom (q.v.) descending with the land.

Corn Production. See the Corn Production Act, 1917, as amended and continued (until Parliament should otherwise determine either by statute or by an address from both Houses) by the Agriculture Act, 1920, Pt. I. It was repealed by the Corn Production Acts (Repeal) Act, 1921.

Corn-rent. A rent payable in, or varying with, the price of corn. Under the statute 8 Eliz. c. 6, it is provided that in all leases by the universities of Oxford or Cambridge, or the colleges of Winchester or Eton, a third part of the rent reserved must be made payable in corn or, at the option of the lessee, in such sum of money as shall represent the market price of the corn immediately before the rent falls due.

Corn-returns. These are weekly and quarterly returns (published in the London Gazette by the Ministry of Agriculture and Fisheries) of the prices of home-grown wheat, barley and oats, and of the quantity of each sold in 190 towns. The returns are taken pursuant to the Corn Returns Act, 1882, ss. 4-9, which entrusted the matter to the Board of Trade. The powers of the Board of Trade in the matter were transferred to the Board of Agriculture by the Board of Agriculture Act, 1889, s. 4.

Cornutum cum Cornuto. HORN WITH HORN (q.v.).

Cornwall. The eldest son of the reigning sovereign is by inheritance Duke of Cornwall during the life of the sovereign. If the eldest son dies without leaving a son, the next surviving son of the sovereign succeeds; but if the eldest son dies leaving a son, the duchy reverts to the Crown, the rule being that unless the heir-apparent is a son of the reigning sovereign the duchy vests in the sovereign. Thus, George III. was not Duke of Cornwall while heir-apparent to his grandfather, George II. The duchy was created in 1367 by royal charter (which was sanctioned by Parliament), and was thereby endowed with seventeen royal manors. Six of these have been sold. The duchy property now consists of the remaining eleven manors, and of all mines and minerals under the whole seventeen manors, and (Cornwall Submarine Mines Act, 1858) of all mines and minerals in Cornwall under ground between high and low water marks, or under estuaries and tidal rivers, unless such mines, etc., be under ground which is part of a royal manor. When there is no Duke of Cornwall the revenues go to the Crown. They amount to about £70,000 net. See STANNARIES; TINBOUNDING.

Corodio habendo. A writ which anciently lay to compel payment of a corody (q.v.).

Corody; Corrody; Corredium was a sum of money or allowance of a house, chamber, meat, drink, clothing or other necessaries paid or allowed by an abbey or other house of religion to a servant of the Crown at the king's request; but the king was entitled to demand corodies only from abbeys, etc., whereof he was founder by right of his crown (see IN CAPITE). Corodies also seem to have been created by grants from one person to another, like annuities, but they are now all obsolete. (See HEREDITAMENT.) A grant of clothing alone should not be called a corody. A corody granted at the request of the king could be enforced by the writ *de corodio habendo*, which was not available in the case of other corodies. See PRECES PRIMARIÆ.

Coronatore eligendo, De. Up to the commencement (1st April, 1889) of the Local Government Act, 1888, this writ was issued to the sheriff of a county on the occurrence of a vacancy in the office of coroner, directing him to proceed to the election of a new coroner. The writ is now issued in a modified form to the county or the borough council.

Coronatore removando, De. This is the writ for the removal from office of a coroner on the ground of his inability or misbehaviour. It was formerly issued to the sheriff of the county, but now, like the writ *de coronatore eligendo* (q.v.), it is issued to the county or borough council. When the writ *de removando* is issued, the writ *de eligendo* accompanies it.

Coroner is an officer having both judicial and ministerial duties, the former including the duty of inquiring as to the manner of death of any person who is slain or dies in suspicious circumstances, or in prison (Coroners Act, 1887, s. 3). The inquest is held before at least twelve jurymen, *super visum corporis* (after viewing the dead body). If the jury return a verdict of murder or manslaughter against any person by name, the inquisition is equivalent to an indictment (q.v.), and it is the duty of the coroner to commit the accused for trial, unless (in case of manslaughter) he thinks fit to admit him to bail. He may also bind over any witnesses to appear at the trial. Another branch of the coroner's office is to inquire concerning treasure-trove (q.v.) (Coroners Act, 1887, s. 36). Coroners had formerly to inquire as to many other matters, but now they can hold no inquest except (*ib.* s. 36) as to treasure-trove or (*ib.* s. 44) in case of death, save in the City of London, where inquests may be held as to fires in the City north of the river (City of London Fire Inquests Act, 1888 (51 & 52 Vict. c. xxxviii)). The coroner is also at common law a conservator of the King's peace and a magistrate by virtue of his appointment. His ministerial office is only as the sheriff's substitute in executing process where the sheriff is incapable of acting, as, for instance, where the sheriff is a party.

There are coroners for every county in England, most counties being divided into districts for the purpose; they are elected by the county council (Local Government Act, 1888, s. 50). There is also a coroner in every borough having a separate court of quarter sessions; he is appointed by the council of the borough (Municipal Corporations Act, 1882, s. 171), and some franchises or liberties (such as lordships, universities, and the like) have their own coroners, being either persons acting as coroners *ex officio* (such as heads of corporation), or persons appointed by them; the right of acting as or appointing coroners in such places being derived from the Crown, they are sometimes called coroners by charter. The City of London, the Cinque Ports, the Dean and Chapter of Westminster, the University of Oxford and other public bodies have coroners of this description. To the same

class belong the coroner of the King's household, otherwise known as coroner of the verge (see VERGE), and the coroners of the Admiralty. The coroner of the King's household is appointed by the Lord Steward for the time being, and has exclusive jurisdiction as to deaths within the limits of any palace or house (or the courts or gardens thereof) in which the King actually is (Coroners Act, 1887, s. 29). The coroners of the Admiralty had jurisdiction in matters arising on the high seas, or on creeks and public rivers, their jurisdiction in the latter cases being concurrent with that of the coroner of the county. The judge of the Admiralty Court was Coroner of the Admiralty; he appointed deputies or substitutes for particular districts, but since 1877 the President of the Admiralty Division has not been appointed Coroner of the Admiralty, the office being in abeyance.

Official coroners are the Lord Chief Justice of England, who, by virtue of his office, is supreme coroner over all England, and the judges of the High Court of Justice, who are also sovereign coroners.

A coroner may be removed from office for inability or misbehaviour by the Lord Chancellor (Coroners Act, 1887, s. 8 (1)) except in the Duchy of Lancaster, where the jurisdiction is with the Chancellor of that Duchy (*ib.* s. 39 (1)). The jurisdiction extends to all coroners (s. 30 (4)); independently of statute, it existed and still exists at common law (s. 35).

Corporal Oath. This was the old name for the form of oath taken while holding the Gospels in the land.

Corporation is a succession or collection of persons having in the estimation of the law an existence and rights and duties distinct from those of the individual persons who form it from time to time. Corporations are of three kinds.

A corporation sole consists of only one member at a time, the corporate character being kept up by a succession of solitary members. Corporations sole are always holders of a public office, the principal examples being the sovereign and ecclesiastical persons, such as bishops, parsons, etc.; the Solicitor for the Affairs of His Majesty's Treasury is a corporation sole of statutory creation (Treasury Solicitors Act, 1876, s. 1). The principal incident of such a corporation is that the property which the member holds by virtue of his office (but not his private property) passes on his death not to his real or personal representatives, but to his successor in office, as if he and the successor were the same person.

A corporation aggregate consists of several members at the same time. The most frequent examples are incorporated companies and municipal corporations. (See COMPANY; MUNICIPAL CORPORATION.) The chief peculiarity of a corporation aggregate is that it has perpetual succession (*i.e.* existence), a name, and a common seal by which its intention may be evidenced; that, being merely a creation of the law, it cannot commit a crime or enter into a personal contract or relation (see PERSONAL); and that the majority of the members have power to bind the minority in matters within the powers of the corporation.

There are also certain corporations which are partly sole and partly aggregate, namely, those in which the property and rights of the corporation are vested in one member as the head or representative of the others, as in the case (before the Reformation) of an abbot and his convent, or (at the present day) of the master of a hospital, who holds the property for the benefit of the poor brethren. These corporations are sometimes spoken of as "corporations aggregate of which the head only is capable" (that is, capable of taking land in succession), and sometimes as "corporations sole in auter droit."

Corporations are further divisible into ecclesiastical [spiritual], such as bishops, deans and chapters, etc., or lay. Lay corporations again are either civil—such as the sovereign, municipal corporations, and trading companies: or eleemosynary—such as colleges, hospitals, and other charitable corporations.

There are some aggregate bodies which are not complete corporations, and are therefore sometimes called quasi-corporations; such are churchwardens, who cannot hold land in succession, and have not a common seal.

With reference to the mode of their creation, corporations exist according to the common law or under a statute. The first class includes many corporations *virtute officii*—such as the Crown, bishops, parsons, etc.: and corporations existing by prescription (q.v.), by charter (q.v.), and by implication. An example of the last kind is where the Crown grants land to "the men of Islington" at a certain rent; this incorporates them, for otherwise the grant could not be fully carried into effect. Corporations created by statute may be divided into those incorporated by special Act of Parliament, as in the case of a railway company, and those created under a general Act, *e.g.* the Companies Act, 1862.

See VISITATION; DISSOLUTION; SEAL; ULTRA VIRES.

Corporation Profits Tax. This tax was first imposed by the Finance Act, 1920, ss. 52-56. It is an annual tax of 5 per cent. on the profits of all limited companies other than companies which carry on any gas, water, electricity, tramway, hydraulic power, dock, canal or railway undertaking. See also S. R. & O., 1920, No. 1466, made pursuant to s. 56 (7), as to assessment, collection and appeals.

Corporator. A corporator is a member of a corporation aggregate.

Corporeal. See HEREDITAMENT.

Corpse. The common law recognises no property in a corpse, which therefore is incapable of being stolen. A coffin, shroud, etc., can, however, be stolen; but the coffin, etc., must be described as the property of some living person.

Burial (q.v.) is the ordinary mode of disposing of a corpse; but cremation (q.v.) is not unlawful at common law and is now regulated by statute.

It is a misdemeanour at common law to dispose of a corpse in order to prevent an inquest being held; to prevent the lawful burial of a corpse; to disinter a corpse without lawful authority; for an undertaker to sell a corpse entrusted to him for burial; or for a person under a duty in law to bury a corpse to leave it unburied.

Corpus Christi. The statute 27 Hen. 6, c. 5, prohibits the holding of markets and fairs upon a number of feast days, amongst which is the "day of Corpus Christi," a feast day instituted in the thirteenth century in honour of the Blessed Sacrament. See FEASTS.

Corpus cum causa. This writ (more properly described as the writ of *Habeas Corpus cum Causa*) formerly issued out of the Court of Chancery to remove into the King's Bench both the body and the record of a man lying in execution upon a judgment of debt.

Corpus delicti. The facts which constitute an offence. It does not mean the body of a murdered man, or a thing which has been stolen, or anything else which has been the subject-matter of a crime.

Corpus humanum non recipit æstimationem (*Hob.* 59). (A human body is not susceptible of appraisement.) The maxim has no present application. It applied only in cases of arrest for debt.

Corpus juris canonici. See CANON LAW.

Corpus juris civilis is the body of Roman law contained in the Institutes, Digest, and Code compiled by order of Justinian, together with the Novellæ, or constitutions promulgated after the compilation of the Code. See the various titles.

Corrector of the Staple. A clerk of the Staple (q.v.), who recorded bargains made between merchants. See the statute 27 Edw. 3, stat. 2, cc. 22, 23, known as the Statute of the Staple.

Corroboration. No plaintiff in a breach of promise action can recover a verdict unless his or her testimony is corroborated by some material evidence in support of the alleged promise (Evidence Further Amendment Act, 1869, s. 2).

No affiliation order can be made unless the evidence of the mother of the bastard child in question is corroborated in some material particular (Bastardy Act, 1845, s. 8; Bastardy Laws Amendment Act, 1872, s. 4).

No person can be convicted under ss. 2 and 3 of the Criminal Law Amendment Act, 1885, of procuring women or girls upon the uncorroborated evidence of one witness (Criminal Law Amendment Act, 1885, ss. 2 and 3).

No person can be convicted upon the unsworn testimony of a child of tender years, unless such testimony is corroborated by other material evidence implicating the accused, of any offence under Part II. of the Children Act, 1908, or of any offence specified in Sched. I. to that Act (*ib.* s. 30), or of any offence under the Prevention of Cruelty to Children Act, 1904 (Prevention of Cruelty to Children Act, 1904, s. 15).

No one can be convicted of high treason unless there be two witnesses, either both of them to the same overt act or one to one overt act and the other to another overt act of the same treason (Treason Act, 1695, ss. 2, 4); but this does not apply to treason directed against the person of the King (Treason Act, 1800; Treason Act, 1842, s. 1).

There is no enactment declaring that no person can be convicted of perjury if there be only one witness whose evidence is uncorroborated, but there is a well-established rule of law to that effect.

A jury ought not to convict upon the uncorroborated evidence of an accomplice, and the judge should so inform them. There is, however, nothing in strict law to prevent them from convicting upon such uncorroborated evidence, but if they do the Court of Criminal Appeal will quash the conviction.

In divorce proceedings the Court will not act upon the uncorroborated evidence of either party.

The evidence of a claimant against the estate

of a deceased person will not be acted on unless it is corroborated, either directly or indirectly, by proof of facts which give it an appearance of verisimilitude.

See also RAPE.

Corrody. See CORODY.

Corruption. Under the Prevention of Corruption Act, 1906, s. 1 (1), any agent corruptly accepting, obtaining, or attempting to obtain from any person any gift or consideration as inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act, or for showing or forbearing to show favour or disfavour in relation to his principal's affairs or business, is guilty of an indictable misdemeanour; and so also is any person who knowingly gives to any agent, or any agent who knowingly uses with intent to deceive his principal, any false, erroneous, or defective receipt, account, or other document. No prosecution can be instituted under the Act without the leave of the Attorney-General or of the Solicitor-General (s. 2). The Act applies not only to private employees, but also (s. 1 (13)) to the servants of municipal bodies

Corruption of Blood. See ATTAINDER.

Corrupt Practice. This means (1) treating, (2) undue influence, (3) personation or the procuring thereof, (4) bribery, or (5) making a false declaration as to election expenses in connection with a parliamentary election (Parliamentary Elections Act, 1868, s. 3; Corrupt and Illegal Practices Prevention Act, 1883, ss. 3, 33 (7)), or a municipal election (Municipal Corporations Act, 1882, s. 77; Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ss. 2, 21 (5)), or a county council election (Local Government Act, 1888, s. 75), or a parish or district council election or other election under the Local Government Act, 1894 (Local Government Act, 1894, s. 48 (3) (8)). As regards parliamentary elections it also means the incurring of election expenses, without the authority in writing of an election agent, by any person (Representation of the People Act, 1918, s. 34): and where the offence is committed by any body of persons, then every director or officer thereof shall be deemed to have committed it unless he proves that it was committed without his knowledge or consent (Representation of the People (No. 2) Act, 1922).

As regards parliamentary elections any corrupt practice, other than personation, is a misdemeanour, and personation is a felony (Corrupt and Illegal Practices Prevention Act, 1883, s. 6); anyone convicted of any corrupt practice is disqualified for membership of the House of Commons and from voting at a parliamentary election for a period of seven years from his conviction (*ib.*); and anyone committing any corrupt practice at any municipal election (Municipal Elections (Corrupt and Illegal Practices) Act, 1883, s. 2) or at a county council election (Local Government Act, 1888, s. 75), or at any election under the Local Government Act, 1894 (Local Government Act, 1894, s. 48 (3)) is guilty of the same offences and is subject to analogous disqualification. See ILLEGAL PRACTICES.

Corsepresent. A mortuary—in the sense of a death-offering. See MORTUARIES.

Corsned. In Anglo-Saxon times this was a piece of barley bread, weighing about one ounce, which an accused person, after certain quasi-religious invocations, was set to swallow. If he succeeded, he was held innocent: failure was proof of guilt.

Corus tritici. An ancient customary measure of wheat, consisting of eight bushels or one quarter: see Brac. lib. 2, c. 6.

Coshering. The Irish chieftains claimed the right—known as coshering—of quartering themselves and their retinues at the houses of their tenants.

Cosinage in the old books signifies consanguinity. A writ of cosinage was a real action which lay for the recovery of lands, etc., of which the heir's great-grandfather's father was seised on the day of his death, and which had been abated by a stranger. The writ was abolished by the Real Property Limitation Act, 1833, s. 36. See ABATEMENT OF FREEHOLD; AIEL; BESAIL; MORT D'ANCESTOR; NUPER OBIT; TRESAYLE.

Cost Book. A cost-book mining company is a partnership formed for the purpose of working a mine under the local customs of the district where the mine is situate. Such companies are found chiefly in Devon and Cornwall and in the High Peak and Wirksworth districts of Derbyshire; but they have existed in other parts of the United Kingdom and in some of the Colonies. There are, however, few such companies now in existence. The shareholders appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine subject to the control of the shareholders. They write in a book, called the cost book, the agreement into which they have entered, and in the same book the purser inserts from time to time the receipts and expenditure of the mine, the names of the shareholders, their respective accounts with the mine, and transfers of shares. Each mem-

ber may transfer or relinquish his share. As a general rule, the capital is not paid up in the first instance, but calls are made from time to time at meetings of the members when required. Cost-book companies in Devon and Cornwall are within the jurisdiction of the Stannaries Court (q.v.), which, since 1896, has been vested in the County Court, and in the High Peak and Wirksworth districts they are within the jurisdiction of the barmote (q.v.) courts of those districts. A cost-book company can be registered as a company under the Companies Acts.

Costera. Used in ancient patents as a synonym of *maritima Angliæ* (q.v.).

Costs. The term "costs" has two meanings. In one sense it denotes the charges which a solicitor is entitled to make and recover from the client or person employing him as his remuneration for professional services, such as legal advice, attendances, drafting and copying documents, conducting legal proceedings, etc. A solicitor's bill of costs is subject to special provisions as to taxation (q.v.), etc., with a view to the protection of the client.

The term "costs" also denotes the expenses which a person is entitled to recover from the other side by reason of his being a party to legal proceedings. They include court fees, stamps, etc., and also, where the party is represented by a solicitor, the reasonable charges and fees of the solicitor and counsel The amount of these costs is ascertained by the process of taxation (q.v.), which is regulated by certain principles of general application.

The costs of actions commenced in the High Court, which might have been commenced in the County Court, are regulated by the County Courts Act, 1919, s. 11, which enacts that: " . . . Where an action is brought in the High Court which could have been commenced in a County Court, then, if the plaintiff recovers less, in the case of an action founded on a contract, than £40, or, in the case of an action founded on tort, than £10, he shall not be entitled to any costs of the action, and if he recovers, in the case of an action founded on contract, a sum of £40 or upwards but less than £100, or, in the case of an action founded on tort, a sum of £10 or upwards but less than £50, he shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a County Court, and, where a plaintiff is entitled to costs on a County Court scale only, the taxing master shall have the same power of directing on what County Court scale and under what column in the scale costs are to be allowed, and of allowing any items of costs, as the judge would have had if the action had been brought in a County Court: Provided that (i) in any such action, whether founded on contract or tort, the Court, or a judge, or, where the action is tried before a referee or officer of the Supreme Court, that referee or officer, if satisfied that there was sufficient reason for bringing it in the High Court or that the defendant, or one of the defendants, objected to the transfer of the action to a County Court, may make an order allowing the costs or any part of the costs thereof on the High Court scale or on such one of the County Court scales and under such one of the columns in the scale as he may direct, and (ii) if in any action founded on contract the plaintiff within twenty-one days after the service of the writ, or within such further time as may be allowed by the Court or a judge, obtains an order under Order XIV. of the Rules of the Supreme Court that he shall be at liberty to sign judgment for a sum of £20 or upwards either unconditionally or, unless that sum is paid into Court or to the plaintiff's solicitor, he shall, unless otherwise ordered by the Court or a judge, be entitled to costs on the High Court scale."

Subject to this enactment, the rules as to costs in the King's Bench Division and the Chancery Division respectively are as follows:

In the King's Bench Division, the successful party in a case tried by a jury recovers his costs from his opponent, unless the judge for good cause otherwise orders (Ord. 65, r. 1). In all other proceedings in that Division costs are in the discretion of the Court or judge (*ib.*).

In administrative proceedings, e.g., actions for the administration of the estate of a deceased person, actions for the execution of trusts, proceedings to ascertain the construction of a will, and bankruptcy and winding-up proceedings, those parties who have properly or necessarily taken part in the proceedings (such as the executors, trustees and persons beneficially interested who have established their rights) commonly obtain their costs out of the estate or fund which is the subject of the proceedings.

In the Chancery Division, costs are always in the discretion of the Court (see Ord. 65, r. 1), there being no question of trial by jury. But the Court must exercise this discretion in a judicial manner. It cannot dismiss an action and order the defendant himself to pay

the costs; and trustees, executors and mortgagees are entitled as of right to their costs.

In the Chancery Division the following varieties of costs require notice:—The costs allowed a successful litigant in ordinary cases are termed "costs as between party and party," and do not include all the expenses to which the party has been put. In certain cases the Court allows costs to be taxed upon a more liberal scale, so as to include many charges which would not be allowed in taxation as between party and party: these are called "costs as between solicitor and client," the most usual instance of their allowance being where a trustee or executor is a party to proceedings in his representative character, and there is a fund under the control of the Court out of which the costs can be paid. In some cases the Court goes even further, and directs the costs of a trustee, executor, or administrator to include "costs, charges and expenses" properly incurred by him, although not strictly costs in the action: these include such allowances as, for instance, the trustee would be entitled to in an account between him and his *cestui que trust*.

In the Court of Appeal, costs are in the discretion of the Court. The general rule of that Court is that the successful party is entitled to his costs; but in exceptional cases that rule is not followed.

The costs of the general or ordinary proceedings in an action or suit are called "costs in the cause" or "costs in the action." Costs of some interlocutory proceedings are not included in the "costs in the cause" unless so ordered. The costs of an interlocutory application are sometimes ordered to be the costs of one of the parties in any event; so that even if he loses the action he is entitled to set off the amount of those costs against the costs in the cause which he has to pay.

When a trial, motion or other step in an action is put off at the request of one of the parties, the Court usually requires him to pay the other party the costs which he has been put to in preparing for the trial or motion, and which are thrown away by the postponement. These are called "costs of the day."

Some old statutes expressly or impliedly gave a successful litigant in certain cases double or treble the amount which he would otherwise have been entitled to in respect of costs. These statutes were repealed by the Limitation of Actions and Costs Act, 1842, See CERTIFICATE.

Costs in the County Court are regulated by the County Courts Act, 1888, s. 113, which provides that, in the absence of a direction from the judge, costs follow the event, but leaves the judge full discretion in the matter. He must, however, exercise that discretion judicially and so cannot, for instance, deprive a successful defendant of his costs merely because the defendant has pleaded the Statute of Limitations.

See AFFIDAVIT; DIVES; HIGHER AND LOWER SCALE; IN FORMÂ PAUPERIS; PAUPER; SECURITY.

Costs de incremento. Costs of increase. An obsolete name for costs to which the affidavit (q.v.) of increase relates.

Costs in Criminal Proceedings. Under the Summary Jurisdiction Act, 1848, s. 18, and the Summary Jurisdiction Act, 1879, s. 54, justices have full power to order payment by the unsuccessful party of the costs of the other party in all cases governed by those Acts, whether such cases be criminal or civil. Before 1st January, 1909, there was no general enactment as to costs in cases triable on indictment. There were, however, many enactments as to the payment of costs in particular cases; but on the date above mentioned, when the Costs in Criminal Cases Act, 1908, came into operation, those earlier enactments were all repealed; and now the Act of 1908 provides by s. 1 that the Court before which any offence is tried on indictment, or a Court of summary jurisdiction which disposes summarily of any offence, triable on indictment as well as summarily, or justices who conduct the preliminary investigation of an indictable offence, may order that the costs of the prosecution or of the defence or of both be paid out of public funds; under s. 6 of the Act the Court before which anyone is convicted of an indictable offence may order him to pay the costs of the prosecution; and under the same section a prosecutor may in certain specified cases be ordered to pay the costs of the defence.

Cotarius. At the time of Domesday this was a cottager who held at a fixed rent with some personal services. His tenure was in socage (q.v.).

Coterellus. At the time of Domesday this was a serf, inhabiting a cottage, whose person, children and chattels were entirely at the disposal of his lord. He held in villenage (q.v.), and seems to have been the same as the cotsethus (q.v.).

Cotland; Cotsethland. Land held by either a cotarius (q.v.) or a coterellus (q.v.).

Cotman-land. At Rotherfield, in Sussex, this means copyhold which descends to the

youngest son and, failing a son, to the daughters in equal shares.

Cotsethus. In the reign of Henry I. this was a cottager bound to labour for the lord. He was a serf. See FERDINGUS.

Cottage. This was defined by Coke as "a little house without land to it." But this definition can scarcely be taken as accurate. The cottager of feudal times could hold land (see COTLAND; COTARIUS; COTSETHUS), and for the purposes of the Housing of the Working Classes Act, 1890, Pt. 3, the word may include a garden of not more than half an acre, and not exceeding the estimated annual value of £3. For the purposes of the Agricultural Rates Act, 1896, c. 16, the word means a house occupied as a dwelling by one of the labouring class. Perhaps "a little house," *simpliciter*, is the best definition.

Cottenham's Acts. This was the popular title of the statutes 10 & 11 Vict. c. 96 and 12 & 13 Vict. c. 74, which have been repealed and replaced by the Trustee Act, 1893.

Cotton Cloth Factories. The enactments dealing specially with such factories are now ss. 90-96 of the Factory and Workshop Act, 1901.

Cotton Marks. The registration of trade marks for cotton—"cotton marks"—is governed by the Trade Marks Act, 1905, s. 64 (as amended by the Trade Marks Act, 1914, s. 1). That section provides for the registration of such marks by "the keeper of cotton marks" in the Trade Marks Registry at Manchester; and s. 71 of the Act gives the Court of Chancery of the County Palatine of Lancaster co-ordinate jurisdiction with the High Court as regards actions relating to such marks.

Council. See CONSULTATIVE COUNCIL; CURIA REGIS; PENSION; SYNOD.

Council of Conciliation. By the statute 30 & 31 Vict. c. 105, power was given for the Crown to grant licences for the formation of councils of conciliation and arbitration, consisting of a certain number of masters and workmen in any trade or employment, having power to hear and determine all questions between masters and workmen which may be submitted to them by both parties, arising out of or with respect to the particular trade or manufacture, and incapable of being otherwise settled. They had power to apply to a justice to enforce the performance of their award. The members were elected by persons engaged in the trade.

The statute 30 & 31 Vict. c. 105 was repealed and replaced by the Conciliation Act, 1896, as to which see CONCILIATION.

Council of Judges. Under the Judicature Act, 1873, s. 75, an annual council of the judges of the Supreme Court is to be held for the purpose of considering the operation of the new practice, offices, etc., introduced by the Act, and of reporting to a Secretary of State as to any alterations which they consider should be made in the law for the administration of justice, and an extraordinary council may also be convened at any time by the Lord Chancellor. The Act is clear; and it would appear that the annual holding of the council is obligatory; but the only meetings of the council which have hitherto taken place were one held in November, 1880, to consider the advisability of abolishing the offices of the Lord Chief Justice of the Common Pleas Division and the Lord Chief Baron of the Exchequer, and of consolidating the three common law divisions of the High Court, and another, held in June, 1892, to consider certain amendments of the Judicature Acts.

Council of the North. A Court instituted, under the royal prerogative, by Henry VIII., in 1537, to administer justice in Yorkshire and the four other northern counties. Under the presidency of Strafford, the Court showed great vigour, bordering (it is alleged) on harshness. It was abolished by the statute 16 Car. 1, s. 10, the same Act which abolished the Star Chamber.

Council of the West. A council (similar to the Council of the North) which Henry VIII. formed about 1540. It, however, was so unpopular in Devon, Cornwall, and other western counties that the Crown soon allowed it to fall into disuse. See 4 *Inst.* 246.

Council of Wales. The full title of this Court was the Court of the Council in the Marches of Wales (q.v.).

Council School. A school provided by the county councils and county borough councils which, under the Education Act, 1921, Part I., are the local education authorities. The term, like "provided school," is of popular origin.

Counsel is a general name for barristers, used especially in certain locutions. Thus, we speak of "instructing counsel," of "giving a brief to counsel," of "the plaintiff's counsel," and so on, meaning that the instructions or brief are given to a barrister: that the plaintiff in a certain case is represented by a barrister, etc.

As to "counsel's signature," see BRIEF.

Counsellor of State. Members of the Privy Council. See REGENCY.

Counsel to the Admiralty. See JUDGE ADVOCATE OF THE FLEET

Count. In criminal procedure, the statement of the indictment is divided into paragraphs called counts If the defendant is charged with several offences in any one count, the indictment is open to the objection of duplicity, or being double, but it may now be amended at any stage of the trial if this can be done without injustice (see AMENDMENT) If there be duplicity which is not amended, either the whole proceedings may be quashed by the court on motion, objection may be taken on demurrer, or there may be an appeal under the Criminal Appeal Act, 1907. It is to be noted that now, under s 4 of the Indictments Act, 1915, any number of offences, whether felonies or misdemeanours, may be charged in separate counts of the one indictment See ARREST OF JUDGMENT; DEMURRER

In civil procedure count originally meant the declaration in a real action In a personal action, if the plaintiff included several causes of action in the same declaration, each section of the declaration (q.v) was called a count It was usual to put at the end of a declaration a number of claims analogous to that arising out of the real cause of action (*e g.* in an action of debt the declaration concluded with claims for money paid by the plaintiff for the defendant at his request, for money received by the defendant for the use of the plaintiff, and for money found due from the defendant to the plaintiff on an account stated), and these were called common, or money, counts Count, says Lord Coke, "cometh of the French word *conte*, which in Latyne is *narratio*."

Counterclaim. If the defendant in an action has a claim against the plaintiff, which he might have asserted by bringing a separate action against the plaintiff, he may raise it in the existing action by adding to his statement of defence a statement of the facts on which he bases his claim, and of the relief which he claims against the plaintiff (Ord 19, r. 3) This is called a counterclaim, and (Ord 21, r. 10) it must be specifically stated to be made as such. If the defendant has a claim connected with the subject of the action against the plaintiff and another person (*e g.* a co-defendant or a stranger), he may set it up by counterclaim, in the latter case, the statement of defence has, in addition to the original title of the action, a new title setting forth the names of the persons against whom the counterclaim is set up (Ord. 21, r. 11); if any one of them is not a party to the action, he is served with a copy of the defence, indorsed with a notice to appear (Ord. 21, r. 12), and is thenceforth in the same position as if he had been sued in an independent action by the defendant (Ord. 21, r. 13), except that his statement in answer to the counterclaim is called a reply (see Ord 21, r. 14) and not a defence. The plaintiff may himself counterclaim in certain cases against a counterclaim.

If the counterclaim is of such a nature that it cannot be conveniently disposed of in the pending action, or is otherwise objectionable, it may be struck out, the defendant being left to bring a cross-action (Ord. 19, r. 3; Ord 21, r. 15).

The Court gives judgment both on the original claim and on the counterclaim, and if the balance is in favour of the defendant, judgment is given for the defendant for such balance or for such other relief as the defendant may be entitled to, as if he were plaintiff in an action against the original plaintiff in the pending action (Ord. 21, r. 17).

As to counterclaims in County Court actions, see County Court Rules, Ord 10, rr 2, 10-21 See SET-OFF.

Counterfeit coin is coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, and includes genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination Making or importing counterfeit coin, whether to pass for coin current in any part of His Majesty's dominions, or to pass for gold or silver foreign coin, is felony (Coinage Offences Act, 1861, ss. 2, 7); exporting any such counterfeit coin (*ib* , s. 8), or making counterfeit foreign copper coin is a misdemeanour (*ib.*, s. 14) See UTTER.

Countermand. To countermand is to recall or revoke: thus to countermand an authority is to revoke it. (See REVOCATION) Notice of trial in an action in the High Court may be countermanded by consent of the parties, or by leave of the Court or a judge (Ord. 36, r 19)

Counter-marque (or Mark). Letters of counter-mark were formerly issued by one nation as a refusal for the issue of letters of marque (q.v.) by another nation.

Counterpart. See LEASE; INDENTURE.

Counterplea. When the tenant in any real action (q v.) vouched anyone to warrant his title, there was said to be a counterplea. The expression was also used in other long obsolete legal proceedings.

Counter Roll. This was a roll or record

kept by one official as a check on the acts of another official. Thus the Statute of Westminster I., c. 10, provided that the sheriffs should have counter rolls with the coroner of appeals, inquests, attachments and other matters dealt with by the coroners, as a means of ensuring that the coroners should be "honest, lawful and wise." The counter roll was known as the *contra rotulus* and the officer who kept it was called the *contra-rotulator* or controller.

Countess. See EARL.

Counting-house of the King's Household. Another name for the Board of Green Cloth (q.v.).

Countors (Contors). An ancient name for serjeants-at-law, applied to them because they dealt with counts (q.v.)

Country is used in certain antiquated expressions to signify (1) a jury, as in the expressions "trial by the country," and "conclusion to the country," which was the mode by which a plaintiff or defendant in pleading offered his case for trial by jury, (2) any place other than a Court, as in the expressions "maintenance in the country" (see MAINTENANCE), and a "deed in the country," as opposed to an alienation by record, that is, in Court. See IN PAIS, GO TO THE COUNTRY.

County or shire is a civil division of England and Wales, of which there have for the last four hundred years been forty in England and twelve in Wales.

Ordinary counties are sometimes called "counties at large," to distinguish them from "counties corporate" or "counties of cities or towns," which are certain cities and towns, some with more, some with less, territory annexed to them, and having, by virtue of various royal charters, the privilege to be counties of themselves and not to be comprised in any other county. (See COUNTY BOROUGHS.) Such are London, York, Bristol, and many others.

Yorkshire is divided into three divisions known as "ridings"; Lincolnshire is divided into three divisions known as "parts", both Suffolk and Essex have an "eastern division" and a "western division", and each of these ridings, parts and divisions has been since 1888 an "administrative county" for the purposes of local government (q.v.). So also is the county of London (created by the Local Government Act, 1888, s. 40 (1)), the Isle of Wight, the part of Northamptonshire known as the Soke of Peterborough, the part of Cambridgeshire known as the Isle of Ely, each of the shires other than Yorkshire, Lincolnshire, Suffolk and Essex, the part of Northamptonshire which is not included in the Soke of Peterborough and the part of Cambridgeshire which is not included in the Isle of Ely. There are thus sixty-two administrative counties. County boroughs (q.v.), of which there are about eighty, are also administrative counties. See also COUNTY PALATINE.

County Associations. These are associations in which the administration of the Territorial Army is vested as regards all matters other than training, embodiment or actual military service. As to their constitution and duties, see Part I. (comprising ss. 1-5) of the Territorial and Reserve Forces Act, 1907. See LORD LIEUTENANT.

County Borough. As from 1st June, 1888, every borough which either was a county of itself or had a population of not less than 50,000 was made a "county borough," and an administrative county for local government purposes, by s. 31 of the Local Government Act, 1888. The original county boroughs are the sixty-one specified in Sch. 3 to that Act. Any other borough having a population of not less than 50,000 may be made a county borough by order made by the Ministry of Health and confirmed by Parliament (s. 54), and under this power the number of county boroughs has been largely increased.

A county borough is practically exempt from the jurisdiction of the county council of the county in which it is situated. The mayor, aldermen and burgesses, acting by the council, have and are subject to all the powers, duties and liabilities of a county council (s. 31 (1)).

County Bridge. A bridge, situate in a highway, which is to be repaired and maintained by the council of a county, as distinguished from bridges to be repaired and maintained by other bodies or by some private person.

County Council. The Local Government Act, 1888, created for each of the sixty-two administrative counties (see COUNTY) an elective body, known as the county council, to take over the administrative business which up to then had been transacted by the justices in quarter sessions, except only the control of the police, which is now vested in a joint committee (q.v.) of the county council and of the county justices. Since 1888 the administration of a very large number of new Acts has been entrusted to the county council, whose powers are now much larger than those of the old quarter sessions. The county council consists of the chairman, aldermen and councillors. The councillors are elected

for each of the electoral divisions—corresponding to wards in a borough—into which the county is divided pursuant to s. 51 of the Act They are all elected at the one time for a period of three years The councillors at their first meeting elect aldermen for a period of six years, half of the aldermen being elected every third year One-fourth of the total number of the council are aldermen The councillors and the aldermen elect the chairman, who holds office for one year. The aldermen are elected from amongst the councillors or those qualified to be councillors, and the chairman is elected from amongst the aldermen or councillors or the persons qualified to be aldermen or councillors The qualification is similar to that of a councillor in a borough (q.v.), except that peers or peeresses owning property in the county are qualified and that ministers of religion are not disqualified If a councillor is elected alderman his seat as councillor is vacated

County Court Judges. The number is not to exceed sixty, no person can be appointed other than a barrister of not less than seven years' standing, the appointment is made by the Lord Chancellor except it be for a district wholly within the Duchy of Lancaster, in which case the Chancellor of that Duchy appoints (County Courts Act, 1888, s 8); and a judge may be removed from office by the Lord Chancellor or the Chancellor of the Duchy (as the case may be) for inability or misbehaviour (*ib* , s. 15) The salary is £1,500 a year (*ib* , s 23) The Lord Chancellor, before appointing, must satisfy himself as to the health of the person whom he proposes to appoint (County Court Judges (Retirement, Pensions and Deputies) Act, 1919, s 2 (4)) A judge must now retire at seventy-two, unless the Lord Chancellor permits him to stay on up to an age not exceeding seventy-five (*ib* , s 1). Pensions are now regulated by s 2 and the schedule of the Act of 1919 In the event of the inability of unavoidable absence of a judge, a barrister, qualified for appointment as a judge, may be appointed as deputy under s 18 of the Act of 1888; and the remuneration of the deputy is provided for by s 21 of that Act and s 4 of the Act of 1919 See HONOUR

County Courts. The modern or statutory County Courts are local and inferior courts of record established throughout England by various Acts of Parliament (commencing with the repealed statute 9 & 10 Vict c 95) for the purpose of providing a cheap and summary mode of procedure in civil cases involving comparatively small amounts For this purpose the country is divided into districts, in each of which is held a County Court, presided over by a judge, who is assisted by a registrar and high bailiff (q v.). The ordinary process of the Court is by plaint and summons (q.v see County Court Rules, Ord. 5), but in some cases proceedings by petition, similar to those in use in the Chancery Division of the High Court and the Bankruptcy Court, are applicable (*ib.*, Ord. 38).

The original jurisdiction may be said generally to extend to claims of debt or for damages (except for libel, slander, seduction or breach of promise) not exceeding £100 (County Courts Act, 1888, s 56; County Courts Act, 1903, s 3), to claims for the recovery of land the yearly value of which does not exceed £100 (Act of 1888, s 59; Act of 1903, s 3), and to claims for the administration of estates, execution of trusts, foreclosure and redemption of mortgages, specific performance, proceedings under the Trustee Acts and Trustee Relief Acts, and matters relating to the maintenance or advancement of infants, to the dissolution of partnerships, and to relief against fraud or mistake where the value of the estate, mortgage, property, etc , does not exceed £500 (Act of 1888, s 67); also to contentious business in probate and administration matters where the gross personal estate of the deceased is under £200 and the gross real estate is under £300 (Court of Probate Act, 1858, s 10).

With the consent of both parties any action assigned to the King's Bench Division can be tried in the County Court (Act of 1888, s 64)

In bankruptcy, County Courts have such jurisdiction as is mentioned under BANKRUPTCY COURTS.

By the County Courts Admiralty Jurisdiction Act, 1868, provision is made for assigning to convenient (s 2) County Courts jurisdiction in Admiralty matters, namely, claims for salvage, where the property salved does not exceed £1,000 or the claim £300, and for towage, necessaries, wages, collision, etc , where the claim does exceed £300 (s 3), but there is, with the consent of the parties, jurisdiction to any amount (*ib*)

Under dozens of special Acts (the Agricultural Holdings Acts, *e g*) the County Court has jurisdictions other than those above mentioned

The High Court has concurrent jurisdiction with the County Courts in matters within their ordinary jurisdiction, but in many cases where the County Courts have jurisdiction a plaintiff who brings an action in the Superior Courts, though he is successful, runs the risk

of losing his costs (see COSTS), and such actions may be remitted to the County Court on the application of the defendant (see REMITTED ACTIONS). By the County Courts Act, 1888, s 7, provision is made for the exclusion of courts of local jurisdiction in cases in which the County Court has concurrent jurisdiction it is done as regards any particular court by Order in Council made upon petition

An appeal lies from the judgment of a County Court to a Divisional Court of the High Court of Justice (R S C., Ord. 59, r 1) except in workmen's compensation cases, in them it lies to the Court of Appeal (Workmen's Compensation Act, 1906, Sch. II. (4)).

As to the power of the County Courts to commit for non payment of judgment debts, see County Court Rules, Ord 25, rr 25, 56, and as to contempt of Court, see CONTEMNOR

The old County Court (or shiremote) was presided over by the earl of the county, or in his absence by the sheriff, the "suitors" (that is to say, the freemen or landholders who were bound to attend the Court), were the judges The County Courts were the principal civil Courts until the system of assizes (q v) was introduced, after which they fell into such disuse, that almost the only business transacted in them was the proclaiming of outlawries (which is obsolete) and the election of sheriffs (which is now in other hands) They were not courts of record See SHERIFF

See COURTS OF REQUESTS, CITY OF LONDON COURT, COURT

County Districts. This includes every urban or rural district (q v) whether a borough or not (Local Government Act, 1894, s 21 (3)) The whole of each parish must be within the same county district unless the county council for special reasons otherwise directs (s 36 (1) (*c*) (ii)) The county council may, under s 57 of the Local Government Act, 1888, alter the boundaries of existing county districts and create new county districts See DISTRICT COUNCIL

County of London Sessions. See MIDDLESEX

County palatine is a county the owner of which formerly had *jura regalia* (q v) or royal franchises and rights of jurisdiction similar to those possessed by the Crown in the rest of the kingdom, thus he had the power of pardoning crimes and appointing judges and officers within his county Three counties palatine—Chester, Durham, and Lancaster—still exist, but they have long been united to the Crown, and assimilated in all important respects to the rest of the kingdom, though the county of Durham still has a separate Chancery Court (see the Palatine Court of Durham Act, 1889), and the Duchy of Lancaster still has some local Courts, as to which see DUCHY OF LANCASTER, also CHANCELLOR, CHANCERY, PALATINE COURTS, ELY, HEXHAM; PEMBROKE

County Rates. These are rates levied, formerly by justices at quarter sessions, but since 1888 by the county council, under the authority of the County Rates Acts, 1852 and 1856, in order to provide, along with income received from other sources, an income sufficient to meet the expenses of the county. The rate is levied according to either the poor law valuation or a valuation made by the assessment committee (q v.) of the county council All appeals against either a valuation or a rate are heard in quarter sessions

Court has the following meanings -(1) A place where justice is judicially administered, (2) the judge or judges who sit in a Court, and (3) an aggregate of separate Courts or judges, as when we speak of the Supreme Court of Judicature (q v), which never sits as a Court, being merely a name for the Court of Appeal and High Court of Justice

Courts are of two principal classes--of record and not of record A Court of record is one whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has authority to fine and imprison for contempt of its authority. Such were the superior Courts of common law before their abolition, and such are the modern High Court of Justice and Court of Appeal, and the County Courts, many of the ancient inferior Courts (*infra*) are also Courts of record

Courts are also divided into superior and inferior, superior Courts being those which are not subject to the control of any other Courts, except by way of appeal such are the Court of Appeal and the High Court of Justice The palatine common law Courts of Lancaster and Durham were also superior Courts, because the counts palatine had *jura regalia* within their counties and their Courts were therefore not subject to the control of other Courts

The inferior Courts include the County Courts, the Mayor's and City of London Court, the Ecclesiastical Courts, Borough Courts, Courts Baron, Courts Leet, and other local Courts. When an inferior Court refuses to exercise its jurisdiction it may be compelled to do so by *mandamus*, and if it exceeds its jurisdiction it

may be restrained by prohibition See MANDAMUS, PROHIBITON.

A third class of Courts may be said to consist of the Courts which really are supreme, inasmuch as they are not subject to appeal to any other Courts, and whose decisions are therefore final These are the House of Lords and the Privy Council; the so-called Supreme Court of Judicature *(supra)* is not a supreme Court in this sense, being subject to the appellate jurisdiction of the House of Lords.

Lastly, Courts are divided into civil, criminal, and ecclesiastical. Those hitherto mentioned belong to the first class The criminal Courts include the High Court of Justice (in which is now vested the criminal jurisdiction of the Court of King's Bench and of the Courts of Assize under commissions of "oyer and terminer" and "gaol delivery," q.v.) the Central Criminal Court and the Courts of magistrates and justices of the peace. See the various titles

As to the Ecclesiastical Courts, see that title

See COURT OF SUMMARY JURISDICTION, INFERIOR COURT

Court Baron is a civil Court held in a manor, and is of two kinds:

A Court Baron, in the original sense of the word, is a Court in which the free tenants or freeholders of the manor are the judges, and the steward of the manor is the registrar. In it all suits concerning lands held of the manor might be, and in early times not unfrequently were, determined, but the jurisdiction to entertain any action has been practically abolished (see COUNTY COURT), and now such Courts are rarely held, except in those manors where the freeholders have a set of customs relating to fines, heriots, regulation of commons and the like.

A Customary Court Baron is one which, said Lord Coke, "doth concerne copiholders, and therein the lord or his steward is the judge" It is more properly described simply as a Customary Court The province of such a Court seems to be to deal with all matters concerning the rights of the copyholders between themselves (as where their consent is to be given to an enclosure of part of the waste), but more especially to register alienations of the copyhold land, all of which were originally transacted in the Customary Court and entered on the court rolls, whence the tenants are called tenants by copy of court roll At the present day, a Customary Court may be held without the presence of any copyholder, unless the business to be transacted requires the consent of the homage (q.v.) (Copyhold Act, 1894, ss 82, 83). The Customary Court is now almost obsolete

Like the Court Leet (q.v), the Court Baron is expressly kept alive by the Sheriffs Act, 1887, s. 40.

See HOMAGE; PRESENTMENT; ROLL; MANOR, HUNDRED COURT

It has been said that in the term Court Baron, "baron" means merely a freeman who holds land; but this seems inconsistent with the old names given to the Court, viz , *court de baroun, curia baronis E. C militis manerii sui predicti*, where "baron" clearly means the lord of the manor

Court Christian is the old name for an Ecclesiastical Court

Court for Crown Cases Reserved was the Court created by the Crown Cases Act, 1848, for the decision of questions of law arising on the trial of a person convicted of treason, felony of misdemeanour (*e g* , at the Central Criminal Court, the assizes or quarter sessions), and reserved by the judge or justices at the trial for the consideration of the Court For this purpose, the judge or justices stated and signed a case setting forth the question and the facts out of which it arose The jurisdiction before the enactment of the Criminal Appeal Act, 1907, was exercised by the judges of the High Court of Justice, or five of them at the least, their decision being final (Judicature Act, 1873, ss 47, 100) The jurisdiction was transferred to the Court of Criminal Appeal by the Criminal Appeal Act, 1907, s. 20 (4). See CRIMINAL APPEAL

Court for Divorce and Matrimonial Causes was established by the Matrimonial Causes Act, 1857, which transferred to it all jurisdiction then exercisable by any Ecclesiastical Court in England in matters matrimonial, and also gave it new powers. The Court consisted of the Lord Chancellor, the three chiefs and three senior puisne judges of the common law Courts, and the Judge Ordinary, who together constituted the "full Court." The Judge Ordinary heard almost all matters in the first instance By the Judicature Act, 1873, s. 3, the jurisdiction of the Court was transferred to the Supreme Court of Judicature; but the main effect of the transfer seems to be to have changed the name of the Court to that of the Probate, Divorce and Admiralty Division of the High Court of Justice, and the name of the Judge Ordinary to that of the President of the Division, for the practice of the Court remains much as before.

See PROBATE, DIVORCE AND ADMIRALTY DIVISION.

Court Lands. The part of a manor kept by the lord for the use of his household. It corresponded to the modern home-farm.

Court Leet. The lords of a great number of manors have the privilege of holding a Court Leet, a criminal Court, which was held for the purpose of presenting small offences in the nature of a common nuisance, which required immediate attention and redress. It is a Court of record, the steward of the manor is the judge and the jury is formed from the inhabitants Originally it was a Court of criminal jurisdiction over the tenants and resiants (or persons resident within the manor) in all matters in which the sheriff's tourn had jurisdiction; it also had the "view of frank pledge" (see FRANK PLEDGE); but its whole jurisdiction has fallen into complete disuse in consequence of the enactment of the Summary Jurisdiction Acts It punished offenders not merely with amerciaments (q.v.), or fines, but also by means of the stocks, pillory and cucking-stool (q.v.) But, obsolete as it is, the Court Leet has been expressly kept alive, if only in a state of suspended animation, by the Sheriffs Act, 1887, s 40 The civil Court of the manor was the Court Baron (q v.). See COMMORANT; MANOR, PRESENTMENT; SHERIFF.

Court Martial is a Court convened by or under the authority of the Crown to try an offence against military or naval discipline, or against the ordinary law, committed by a soldier or sailor in his Majesty's service Courts martial proceed and pass sentence according to the Acts regulating the discipline of the Army and Navy respectively

Court of Admiralty. See ADMIRAL; ADMIRALTY ACTION, ADMIRALTY DIVISION

Court of Ancient Demesne, as its name implies, is a Court in which the freeholders of land in ancient demesne are the judges, in much the same way as the freeholders of an ordinary manor are the judges in a Court Baron (q v.) The two Courts closely resemble one another. See ANCIENT DEMESNE; MANOR

Court of Appeal. See SUPREME COURT

Court of Appeal in Chancery consisted of the Lord Chancellor and two Lords Justices of Appeal. When they all sat together they constituted the full Court; but generally the Lords Justices sat together as one Court and the Lord Chancellor alone as another Court The Court heard appeals from the Master of the Rolls and the Vice-Chancellors (q v) and from the London Bankruptcy Court, and also had jurisdiction in lunacy; and from its decisions in most cases an appeal lay to the House of Lords. The jurisdiction of the Court is now transferred to the Court of Appeal.

Court of Arches. An ecclesiastical Court, so called because originally held in the Church of St Mary-le-Bow (*Sancta Maria de Arcubus*). It exercised jurisdiction in, amongst other things, testamentary matters; but this jurisdiction was transferred by the Court of Probate Act, 1857, to the Court of Probate (now represented by the Probate Division). It was subsequently held in the hall belonging to the College of Civilians, commonly called Doctor's Commons, but in more recent times the office of the Court of Arches became annexed to, and was commonly discharged by, the judge of the Court of Admiralty, in his Court at Westminster and now under the Public Worship Regulation Act, 1874 (q v.), s 7 a special judge has been appointed for this portion of the ecclesiastical jurisdiction, which is exercised at the Church House, Westminster The Court as reconstituted is under the control of the King's Bench Division in case it exceeds its jurisdiction, or proceeds to affect the liberty or property of the subject otherwise than in accordance with law

Formerly proctors (q v) had the exclusive right to practise in the Court and advocates (q v) had the exclusive right of audience But now the Solicitors Act, 1877, s 17, gives solicitors a right co-ordinate with that of proctors, and barristers have now the same right of audience as that formerly possessed by advocates, who are now extinct

The Court of Arches is the Court of Appeal of the Archbishop of Canterbury, the judge thereof hears all appeals from bishops or their chancellors, or commissaries, deans and chapters, and archdeacons, and from his decision an appeal lies to the Judicial Committee of the Privy Council except in cases under the Clergy Discipline Act, 1892 That Act, by s. 4, gives an appeal, at the option of the appellant, to either a Consistory Court or the Privy Council, and if the appeal is to a Consistory Court the decision of that Court on the appeal is final. The Court of Arches has also an original (or peculiar) jurisdiction over the thirteen peculiar parishes in London which belong to the Archbishop of Canterbury; but, upon receiving letters of request from any bishop, the Archbishop may assume original jurisdiction in any ecclesiastical matter arising elsewhere The peculiar jurisdiction has been much diminished by statute. See ARCHES, DEAN OF; COURT OF PECULIARS

Court of Chivalry, or Court Military, was a Court not of record, held before the Lord High

Constable and Earl Marshal of England, and the Court was also known as the Court of the Constable and Marshal To it was attached a prison, called the White Lyon, in Southwark (2 *Nels Abr* 935) It had jurisdiction, both civil and criminal, in deeds of arms and war, armorial bearings, questions of precedence, etc , and as a Court of honour It has long been disused See EARL MARSHAL; CONSTABLE, LORD HIGH, PRIVILEGES, COMMITTEE OF

Court of Claims. The title of the commission to enquire into all claims to perform services at the coronation of each sovereign The first Court of Claims was that appointed in connection with the coronation of Richard II The Court was originally held by the Lord High Steward But Henry IV was Lord High Steward when he became king; so that thereupon the office merged in the Crown From then until the accession of Henry VIII. the Court was held before commissioners for executing the office of Lord High Steward Henry VIII appointed commissioners, without reference to the Lord High Steward, to hold the Court, and this has ever since been done

Court of Common Council. See LONDON

Court of Common Hall. See LONDON

Court of Delegates. See DELEGATES

Court of Faculties. See FACULTY

Court of Great Sessions. See WALES.

Court of High Commission. See HIGH COMMISSION

Court of Honour of the Earl Marshal of England. A designation of the Court of Chivalry after the Earl Marshal (q.v) had become the sole judge

Court of Hustings is a Court in the City of London which existed before the Conquest, and is the oldest Court in the City. It originally had jurisdiction in all actions to any amount Subsequently, apparently in the thirteenth century, much of its jurisdiction was assigned to the Sheriff's Court and more to the Mayor's Court, only real and mixed actions and the action of replevin being left to the Court of Hustings and, later still, the Court was divided into the Court of Hustings for Pleas of Land, which once at least during the present century has sat to enrol a deed, and the Court of Hustings of Common Pleas, which has long been disused. The Lord Mayor, or an alderman who has "passed the chair"—that is to say, who has been Lord Mayor—and the sheriffs are theoretically the judges of the Court, but, when and if it sits, the recorder is in practice the judge See COMMON PLEADER

In Lyme Regis also there is a Court of Hustings which sits under the authority of a charter of Edward I. Procedure is similar to that of the superior Courts a hundred years ago. It has jurisdiction in debt (q v) and *assumpsit* (q v) to any amount It is still to some extent availed of but chiefly in cases in which there is no defence

Anciently there were also Courts of Hustings at Great Yarmouth, Lincoln, Norwich, Oxford, Winchester and York. See HUSTING

Court of Passage is an inferior Court of record, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool Up to 1835 it was also called the Borough Court of Liverpool. It was formerly held before the mayor and bailiffs of the borough; but the Court of Passage Act, 1834 (4 & 5 Will 4, c xen), s 2, provided that the Court should not sit without a legal assessor, while s 8 provided that the attendance of the mayor and bailiffs was unnecessary; and now, under the Liverpool Court of Passage Act, 1893, c 37, s 6, the assessor is the presiding judge, and (s 8) has the powers of a judge of the High Court sitting at Nisi Prius or in chambers He must be a barrister of not less than seven years' standing (Court of Passage Act, 1834, s. 2; Liverpool Court of Passage Act, 1893, s 6).

The Court has jurisdiction in personal actions to any amount where any defendant resides or carries on business within the jurisdiction or, by leave of the Court, when any part of the cause of action arose therein, but no action under £20 can be commenced in the Court if the County Court has jurisdiction (Liverpool Court of Passage Act, 1893, s 2) The High Court has power to order certain actions of contract to be tried in the Passage Court (*ib* , s 3), and may in certain cases remit to it actions of tort (*ib* , s 4) The Court has jurisdiction in Admiralty similar to and co-extensive with that of the County Court of Lancaster at Liverpool (County Courts Admiralty Jurisdiction Act, 1868, s 25).

This Court is a remarkable instance of the adaptation to the needs of a great modern city of a Court with an antiquated procedure which in remote times had served the needs of a village such as Liverpool was

Court of Peculiars, according to Blackstone, is a branch of and annexed to the Court of Arches (q v), and has jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only.

It seems, however, to have been practically abolished by the Church Discipline Act, 1840, and the Ecclesiastical Jurisdiction Act, 1847 See ARCHES, DEAN OF

Court of Pie Poudre (or of Piepowders). This is commonly said to be the Court of the Dusty Feet, but an alternative derivation makes it to be the Court of the Pedlars. It was a court which anciently decided summarily and on the spot disputes which arose in fairs and markets. Such courts are obsolete except in the single instance of the Bristol Court of Pie Poudre, which is still held before the recorder of that city

Court of Pleas at Durham was a Court of the County Palatine of Durham, having a local common law jurisdiction It was abolished by the Judicature Act, 1873, s 16, which transferred its jurisdiction to the High Court See COUNTY PALATINE, PALATINE COURTS

Court of Policies of Insurance. See POLICIES, etc

Court of Probate. The Court of Probate Act, 1857, provided that the voluntary and contentious jurisdiction and authority of all ecclesiastical, peculiar, manorial and other courts and persons in England having jurisdiction or authority to grant probate of wills or letters of administration should cease, and that such jurisdiction and authority should thenceforth be exercised in the name of Her Majesty in a court to be called the Court of Probate, consisting of a judge and a number of registrars. Under the provisions of the Judicature Act, 1873, ss 3, 16, the jurisdiction of the Court was transferred to the Supreme Court of Judicature, the principal effect of the transfer being to change the name of the Court to that of the Probate, Divorce and Admiralty Division of the High Court of Justice (q v), and to alter the practice in contentious business See CAVEAT, CITATION, PLEADING, PROBATE, PROBATE, DIVORCE AND ADMIRALTY DIVISION; WARNING

Court of Requests. See COURTS OF REQUEST

Court of Review was part of the old Court of Bankruptcy under the statutes 1 & 2 Will 4, c 56, and 5 & 6 Vict. c 122, and exercised a kind of supervision or appellate jurisdiction over the Commissioners in Bankruptcy (q.v) It was abolished in the year 1847

Court of Summary Jurisdiction. This means "any justice or justices of the peace, or other magistrates by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales or Ireland and whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his commission or under the common law" (Interpretation Act, 1889, s 13 (11)) From this definition it necessarily follows that justices are a court of summary jurisdiction only when the procedure is governed by the Summary Jurisdiction Acts Thus justices holding the preliminary inquiry into an indictable offence are not a court of summary jurisdiction Compare PETTY SESSIONAL COURT

Court of the Clerk of the Markets. See CLERK OF THE MARKETS.

Court of the Constable and Marshal. The COURT OF CHIVALRY (q v)

Court of the Council of the Marches of Wales. Henry VII established a council at Ludlow to control the lords marchers (q v); and the statute 34 & 35 Hen 8, c 26, gave formal sanction to its existence and authority. In addition to exercising functions which were analogous to those of the Star Chamber (q v), it was in some cases a Court of Appeal from the Court of Great Sessions (q v) In 1569 Cheshire and Flintshire were exempted from its jurisdiction and in the reign of James I the judges resolved that it ought not to have jurisdiction in Shropshire, Herefordshire, Gloucestershire and Worcestershire. The statute 16 Car 1, c 10, s. 2 abolished the extrajudicial functions of the Court without touching its judicial functions The latter remained in abeyance until 1660 They were then revived and they continued to be exercised until the Court was finally abolished by the statute 1 Will. & M. c 27.

Court of the Duchy Chamber of Lancaster is a Court which may be held before the Chancellor of the Duchy or his deputy, and which has jurisdiction in all matters of equity relating to lands held of the Crown in right of the Duchy of Lancaster, these are said to include a large district of land within the city of Westminster The Court has never been abolished, but it has not sat within recent years The jurisdiction is not exclusive

Court of the Lord Steward of the King's Household. This was an ancient Court which at first existed for the purpose only of punishing felonies or other offences committed by the king's servants against any member of the King's Council The statute 33 Hen 8, c 12, s 3, enacted that all "treasons, murders, manslaughters and bloodshed" within any palaces or residences of the king should be tried before this Court; but, in order to pre-

vent the Court being vexatiously set in motion for mere trivial matters, s. 6 provided that the Act should not extend to any nobleman or to any other person or persons who should strike his or their servants with "his or their hands or fists or with any small staff or stick for correction and punishment for any offence" so as to cause bloodshed, unless the servant who was struck died of the blow within a year and a day.

Section 3 of this Act was repealed by the statute 9 Geo. 4, c. 31, s 1, and the jurisdiction of the Court was therefore taken away This Court is to be distinguished from the Court of the Lord High Steward (q.v), and also from the Court of the Marshalsea held before the Steward and the Marshal of the King's Household. See LORD STEWARD OF THE KING'S HOUSEHOLD; TOLZEY COURT.

Court of the Marches of Wales. See MARCHES.

Court of the Marshalsea. This Court existed by prescription from very early times Officially it was known as *Placita coronæ aulæ hospitii domini Regis coram Seneschallo et Marschallo*, it being held before the Seneschal, or Steward, and the Marshal of the King's Household. It was not in any way connected with the well-known prison of the Marshalsea (q v). It had jurisdiction only in cases in which one at least of the parties was a member of the household. Attempts on the part of the Court to intermeddle with matters outside its jurisdiction were checked by the statute 18 Edw 3, c. 27 It had jurisdiction within a radius of twelve miles of the residence for the time being of the king, and was a migratory Court. Ultimately, under Charles I., the Court came to sit permanently at Westminster along with the Palace Court (q.v.). The Court of the Marshalsea for long had merely a nominal existence, though the Palace Court was in full work; but both Courts were abolished by the statute 12 & 13 Vict c 101, s. 13 See STATUTO FACTO POUR SENESCHAL, etc.

Court of Wards and Liveries. This Court was established in 1541 by the statute 32 Hen. 8, c 46, for the purpose of providing the king with an effectual means of asserting his rights with regard to the incidents of tenure by knight service, wardships, liveries, relief and primer seisin, knighthoods, licences on alienation, and the value of marriages, etc and as the king was then the immediate lord of a large part of the kingdom, the exactions of his rights through this Court made it most unpopular. Through this Court the Crown also exercised its control over the persons and property of lunatics. The Court purported to be abolished by a resolution of the Long Parliament in 1645 and by an Act passed during the Protectorate in 1656; and it was formally abolished in 1660 by the statute 12 Car. 2, c. 24, which put an end to the feudal system. See KING'S WIDOW; MASTER OF THE WARDS.

Court Roll. See COPYHOLD; COURT BARON.

Courts of Audience. These are ecclesiastical Courts, in which the two Primates once exercised in person a considerable part of their jurisdiction. They seem to be now obsolete, or at least to be used only on the rare occasion of the trial of a bishop.

Courts of Conscience. These were Courts for the recovery of small debts held by members of various corporations who, without the intervention of professional advocates, decided such cases as came before them They are all now superseded by other tribunals.

The Court of Conscience—otherwise known as the Court of Requests—of the City of London was perhaps the most important Under an Act—that is to say, a resolution—of the Common Council passed in 1517, the Lord Mayor and aldermen every month assigned two aldermen and four common councilmen to act as commissioners for the decision of all matters of debt between citizens and freemen of the city which were brought before them The number of commoners in the Court was by a subsequent Act of the Common Council increased to twelve. But the Court had no legal sanction. "Divers attornies and solicitors (for their own particular gain)," according to Stryke, got their clients to proceed elsewhere than in the Court, to the ruin of small debtors Therefore the Court received statutory sanction under the Act 1 Jac. 1, c 14, and was subsequently regulated by numerous Acts of Parliament, and ultimately by the statute (Loc and Pers) 5 & 6 Will. 4, c. xciv, in which the previous enactments are recited. The Court seems to have been a useful one—Stryke, writing in 1720, says that a case might be determined in it at a total cost of one shilling and eightpence—but it was abolished in 1847 by the statute (Loc. and Pers.) 10 & 11 Vict c. lxxi, and its business was merged in that of the Sheriff's Court of the City of London, which, under the County Courts Act, 1867, became known as the City of London Court (q v.), and was by virtue of the County Courts Act, 1888, s. 185, assimilated to the ordinary County Courts. From 1847 the old

procedure under which cheap and rough-and-ready justice was administered by laymen who had no qualifications except knowledge of business and, presumably, common sense, had ceased to exist, and thenceforward litigants appeared before a paid judge and could be represented by professional advocates

Courts of Request were inferior Courts having local jurisdiction in claims for small debts, established in various parts of the kingdom by special Acts of Parliament The Court of Requests of the City of London is dealt with under COURTS OF CONSCIENCE: the other Courts of Requests were abolished in 1846, and the modern County Courts (q.v.) took their place.

There was also a minor court of equity called the Court of Requests, presided over by the Lord Privy Seal and the Masters of the Requests (similar to the Masters in Chancery), which entertained suits by poor persons It was virtually abolished in Queen Elizabeth's reign by a decision of the Court of Queen's Bench

Courts of Sewers. The Commissioners of Sewers (q v) sitting for the discharge of their functions They are not declared by any statute to be a Court, but in their commission they are described as the King's "justices," and the King's Bench has decided that they are a Court of record

Courts of Survey are Courts for the hearing of appeals by owners or masters of ships from orders for the detention of unsafe ships made by the Board of Trade or a detaining officer (q.v), under the Merchant Shipping Acts, 1894 to 1916 (Merchant Shipping Act, 1894, s 459), or from a declaration of survey of a passenger steamer (*ib* , s 275; Merchant Shipping Act, 1906, s 75), that is to say, from a declaration as to her fitness for service, or from the refusal by an emigration officer of a certificate of clearance for an emigrant vessel (Merchant Shipping Act, 1894, s 318) A Court of Survey consists of a judge and of two assessors, one appointed by the Board of Trade, and the other summoned by the registrar out of a list of persons provided for the purpose The judge is usually either a wreck commissioner, a stipendiary or metropolitan police magistrate, a county court judge, or other fit person approved by the Home Secretary; but in certain cases the Board of Trade may appoint a wreck commissioner to be the judge (Merchant Shipping Act, 1894, s 487 (1) (2) (3)).

Covenant is a promise under seal, that is to say, a promise, agreement or contract contained in a deed or instrument sealed and delivered by the promisor, who is called the covenantor, the promisee being called the covenantee In any deed executed after 31st December, 1881, a covenant binds the heirs of the covenantor even though they be not mentioned (Conveyancing and Law of Property Act, 1881, s 59) A covenant, being a contract, is in many respects subject to the same rules as other contracts, as to these, see CONTRACT, CONDITION, PROMISE

Covenants are either express or implied. By an implied covenant (or covenant in law) is generally meant one created by the law irrespectively of the intention of the parties: thus, apart from statute, in a lease for years the word "demise" creates a covenant by the lessor for quiet enjoyment by the lessee (*i.e.* that he shall occupy the land free from eviction and disturbance by the lessor), unless the lease includes an express covenant to the same effect, and thus also, under the Conveyancing and Law of Property Act, 1881, s. 7, where anyone conveys and is expressed to convey "as beneficial owner," or "as settlor," or "as trustee," or "as mortgagee," or as personal representative of a deceased person, or under an order of the Court, or as committee of a lunatic so found by inquisition, the effect, except in a lease, of his so conveying is that the covenants for title appropriate to the particular conveyance are implied and are not set out in the conveyance, as was necessarily done before the Act In the case, for instance, of a conveyance (other than a mortgage) for valuable consideration, the covenants so implied by the use of the words "as beneficial owner" are (1) for right to convey, that is to say, good title to convey, the lands, (2) for quiet enjoyment, that is to say, that they shall be quietly enjoyed under the conveyance; (3) for freedom from incumbrance, that is to say, that the lands are not incumbered except as expressly stated in the conveyance, and (4) for further assurance (q v) There are also implied covenants in the more accurate sense of the term: thus, the reddendum (q v) of a lease is an implied covenant by the lessee for payment of the rent. See EXPRESS, IMPLIED; TACIT

Covenants were formerly divided into real and personal A real covenant was one by which a man bound himself to pass or convey lands, etc , to another, so that the land itself could be recovered: *e.g.* a covenant to levy a fine or a warranty (q v); a personal covenant, on the other hand, merely gave the right to

recover damages for non-performance. Real covenants no longer exist (Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27, s. 36)) A personal covenant may deal with any subject, *e.g.* the payment of a sum of money, the execution of work and labour, etc., or it may relate to or be connected with land. Covenants connected with land are divided into those which are annexed to an estate in the land, and collateral covenants. A covenant annexed to an estate in land, or a "covenant running with the land," is one the benefit or burden of which passes to an assignee of the estate when the owner assigns it: thus, if a lessee of buildings covenants to repair them, and assigns the lease, the covenant binds the assignee. So we speak of covenants being annexed to, or running with, a reversion: thus, a covenant to pay rent runs with the reversion, that is, every assignee of the reversion can enforce the covenant against the tenant. (See PRIVITY.) Some covenants, including implied covenants, run with the land whether assigns are mentioned in them or not, while others only do so where assigns are expressly mentioned. Opposed to covenants running with the land are collateral covenants or covenants in gross, namely, to do something not concerning the land demised or conveyed, thus, as if the lessee covenants for him and his assigns to build a house upon the land of the lessor which is no parcel of the demise, it does not bind the assignee. A covenant, however, though it does not run with the land, may be binding in equity upon every person who takes an assignment with notice of it: such a covenant is sometimes called a "covenant running with the land in equity." Practically speaking, a restrictive covenant (one which in some way restricts the use of the land) is the only covenant which runs with the land in equity. See BENEFICIAL OWNER, SEISIN, COVENANT FOR, SEVERAL.

Covenant, Action of. This was the action which down to 1875 lay where a party claimed damages for breach of covenant, that is to say, of a promise under seal. It was a well-established form of action by the end of the twelfth century. See COVENANT, WRIT OF, ACTIONS.

Covenant to stand seised is a conveyance adapted to the case where a person seised of land in possession, reversion, or vested remainder, proposes to convey it to his wife, child or kinsman. In its terms it consists of a covenant by him, in consideration of his natural love and affection, to stand seised of the land to the use of the intended transferee. Before the Statute of Uses this would merely have raised a use in favour of the covenantee; but by that Act this use is converted into the legal estate, and the covenant therefore operates as a conveyance of the land to the covenantee. It is now obsolete. See CONVEYANCE; STATUTE OF USES, CONSIDERATION.

Covenant, Writ of. At common law this was a writ which lay for one claiming damages for breach of covenant. It was formally abolished by the Real Property Limitation Act, 1833, s. 36, but long before then it had fallen into disuse, the remedy latterly being either by action of debt (q.v.) in case the damages were liquidated, or by action of covenant (q.v.) if they were not; and now, as will be seen from ACTIONS, both of these forms of action have themselves been abolished.

The writ sued out for the purpose of levying a fine (q.v.) was usually the writ of covenant, but at an early period other writs were used.

See CLERK OF THE KING'S SILVER.

Coventry Act. The popular title of the now repealed statute 22 & 23 Car. 2, c. 1, which was passed in consequence of Sir John Coventry, M.P. for Weymouth, being set upon by a band of ruffians who slit his nose in order to mark their disapproval of a speech made by him in the House. It provided that any such assault should be felony without benefit of clergy.

Covert; Coverture. A married woman, during the continuance of the marriage, is called in Norman French a *feme covert*, because she is under the protection of her husband. Coverture means—(1) the condition of a married woman, or the fact of her being married, and (2) the continuance of the marriage. (See MARRIAGE.) If she becomes, and while she remains, a widow, she is said to be *discovert*.

Covert-baron. A married woman. See *Blackstone, Com.* I., 442.

Covin, says Coke, "is a secret assent determined in the hearts of two or more to the defrauding and prejudice of another". as, says the *Termes de la Ley*, "if a tenant for term of life, or tenant in tail, will secretly conspire with another, that the other shall recover against the tenant for life the land which he holds, etc., in prejudice of him in the reversion, or if an executor or administrator permit judgments to be entered against him by fraud, and plead them to a bond, or [if] any fraudulent assignment or conveyance be made, the party grieved may plead covin and relieve himself".

Covin, therefore, seems to have merely a

negative effect, that is, it avoids the transaction of which it forms part, but does not give rise to a liability, as does conspiracy or fraud The term, however, is not now in use, some one or other of the terms "deceit," "fraud," "collusion," "conspiracy to defraud," being the modern equivalent

Covinous. Savouring of covin (q v)

Cowper-Temple Clause. The popular title of s. 14 (2) of the Elementary Education Act, 1870, which enacted that "no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school," the school being a public elementary school The Education Act, 1902, s 25 (2), Sch 3, applied this enactment to the schools provided by the education authorities established by that Act see also s 4 See now the Education Act, 1921, s. 28 (1)

Compare Conscience Clause, Kenyon-Slaney Clause.

Crabs and Lobsters. Provision is made for the protection of crabs and lobsters by the Fisheries (Oyster, Crab and Lobster) Act, 1877, Pt II , the Sea Fisheries Regulation Act, 1888, s 2 (1) (*e*); the Fisheries Act, 1891, s 9, and the Sea Fisheries (Shell Fish) Regulation Act, 1894

The power and duties of the Board of Trade under these Acts are transferred to the Ministry of Agriculture and Fisheries by the Board of Agriculture and Fisheries Act, 1903, s. 1 (2), Sch

Cran. This is a Scotch measure for fresh herrings It, or the quarter-cran, may legally be used for fresh herrings in any area (including the adjoining sea) of England and Wales in which the Cran Measures Act, 1908, is in force under an order made pursuant to s 11 (1) thereof by the Ministry of Agriculture and Fisheries The cubic capacity of the cran is four times that of the quarter cran (s 1 (1)) The Cran Measures Regulation, 1908, Order, dated 24th October, 1908 (Stat R & O , 1908, p 353), made under s 8, provides that the quarter-cran, if made of wood, shall be an oblong box of the following dimensions: length inside, 31 inches, depth inside, 7 inches, breadth inside, 14¾ inches The Act has been put in force in many maritime areas

Cranworth's Act, Lord. The popular title of the statute 23 & 24 Vict. c 145, which was also known as the Trustees and Mortgagees Clauses Act

Cravent. In trial of battle a combatant who acknowledged himself beaten did so by crying "cravent." Hence the colloquial "cry craven.'

Creamer. This is stated by various authorities to have formerly meant a foreign merchant, more especially one who had a stall in a fair or market, or a pedlar or huckster.

Credit; Credibility; primarily signifies belief in a person's trustworthiness

Thus, in the law of evidence, the objections which were formerly sufficient to make a witness incompetent are now in general only available as affecting his credibility, or his worthiness to be believed Such are—the fact of his having an interest in the result of the proceeding, the fact of his having been convicted of felony, of his being under the age of fourteen years, etc Credibility is a question for the jury. See Competency, Discredit

When a person agrees to postpone the payment of money to which he would otherwise be entitled, he is said to give credit, thus, if A sells goods to B and the price is to be paid at a future time, this is a sale upon credit. See Creditor, Debt, Letter of Credit, Mutual Credits

Creditor is a person to whom a debt is owing by another person, called the debtor. The creditor is called a simple contract creditor, a specialty creditor, a bond creditor, or a judgment creditor, according to the nature of the obligation giving rise to the debt (see Contract, Debt), and if he has issued execution to enforce a judgment he is called an execution creditor He may also be a sole or a joint creditor See Joint.

In the law relating to the administration of the assets of bankrupts, companies in liquidation, and persons dying insolvent, creditors claiming to share in the assets are divided into secured and unsecured In bankruptcy a secured creditor is a person who holds a mortgage, charge or lien on the property of the bankrupt (Bankruptcy Act, 1914 (4 & 5 Geo 5, c 59), s 167), and includes judgment creditors who have levied execution by seizure of property belonging to the bankrupt, or have obtained and served garnishee orders

In bankruptcy, a secured creditor is, for the purpose of petitioning for adjudication (*ib* , s. 1 (2)), proving his debt (s 32, Sch 2, rr 10, 11, 12), receiving dividends (*ib*), and voting (s 13, Sch 1, rr 10, 11), deemed to be a creditor only in respect of the balance due to him after realising or deducting the value of his security, unless he gives up his security to the official receiver or trustee If he does not comply with these rules he is excluded from all share in the dividends (s 32, Sch. 2, r 17). In order to prevent persons from under-esti-

mating the value of their securities, it is also provided that the trustee or official receiver shall have power to purchase the security of any creditor at the value which he has set on it (s. 13, Sch. 1, r. 12; s. 32, Sch. 2, r. 13). If the creditor has realised it at a price exceeding his valuation, the sum so realised becomes the amended valuation (s. 32, Sch. 2, r. 16).

Unsecured creditors in bankruptcy are divided into those who are entitled to preferential payment and those who are not. See DEBT.

The Judicature Act, 1875, s. 10, provides that the rules of the bankruptcy law for the time being as to the respective rights of secured and unsecured creditors shall prevail and be observed in the administration by the Court of the assets of any person dying insolvent after the commencement of the Act. The principal effect of this section is to compel a secured creditor to deduct the value of his security and prove for the balance of his debt. It also has the effect of depriving a creditor of the right to interest on his debt from the date of the judgment or order of administration (which is treated as equivalent to an adjudication in bankruptcy), unless (Bankruptcy Act, 1914, s. 33 (8)) there is a surplus after payment of the debts.

The Companies (Consolidation) Act, 1908, s. 207, applies the rules of the bankruptcy law for the time being, as to the respective rights of secured and unsecured creditors, to the winding-up of an insolvent company just as the Judicature Act, 1875, s. 10, applies them to the administration of an insolvent estate.

In the law of bankruptcy and winding-up a petitioning creditor is a creditor who presents a petition for adjudication or winding-up. In bankruptcy, his debt must amount to £50, or if several creditors join in the petition the aggregate of their debts must amount to that sum (s. 4 (1) (*a*)). In winding-up, his debt must exceed £50 (Companies (Consolidation) Act, 1908, ss. 129, 130, 137).

As to frauds on creditors, see FRAUD; FRAUDULENT CONVEYANCES.

Cremation. To burn a dead body is not an offence unless it be done in such circumstances as to create a public nuisance or for the purpose of preventing the holding of an inquest. Cremation had been, however, almost unknown in England until 1883, but from that date crematoria began to be erected and cremation became not unusual. It is regulated by the Cremation Act, 1902, which, by s. 7, empowers the Secretary of State to make regulations as to cremation, and by s. 8 makes it an offence, punishable summarily, to cremate except in accordance with the Act and with such regulations.

To make any false declaration for the purpose of getting a body cremated is an offence punishable on indictment (s. 8 (2)); and so also is the cremation, or the attempted cremation, of a body for the purpose of concealing the commission of any offence (s. 8 (3)).

Crescente malitiâ crescere debet et pœna (2 *Inst.* 479). (Where malice increases punishment ought also to increase.) Where there is merely malice in law the offence may well be less grave than where there is malice in fact. Compare MULTIPLICATA TRANSGRESSIONE, ETC.

Crime; Criminal Law. The word "crime" has no technical meaning in the law of England, but it is generally used to include all acts amounting to treason, felony or misdemeanour (q.v.). Crimes are violations of public rights and duties due to the whole community, considered as a community, in its social aggregate capacity.

Criminal law is that part of the law which relates to crimes and their punishment.

Crimen Falsi. Falsification. A common law offence, which in the thirteenth century meant the unauthorised sealing of writs or charters with the king's seal. Subsequently it was extended to mean various other offences involving fraud, such as forgery, perjury or subornation of perjury, suppression of evidence, barratry, or conspiracy to accuse of crime.

Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam (3 *Inst.* 210). (Treason is punished more severely than any other crime.) Coke quotes the maxim from Bracton, who used *crimen læsæ majestatis* as meaning treason. Compare REUS LÆSÆ.

Criminal Appeal. The Criminal Appeal Act, 1907, created the Court of Criminal Appeal. Under the Criminal Appeal (Amendment) Act, 1908, the Court consists of the Lord Chief Justice and all the puisne judges of the King's Bench Division. Three, or any higher odd number, form a quorum. The Act of 1907 is the statute under which an appeal on the facts, as distinguished from the law (see COURT FOR CROWN CASES RESERVED) and against the sentence, was for the first time given to a prisoner convicted on indictment. Any person so convicted may appeal (1) on any question of law; (2) with the leave of the Court of Criminal Appeal or of the judge who tried him, on any question either of fact or of mixed law and fact, or on any other reasonable ground; and (3) against the

sentence. The Court may increase as well as mitigate the sentence (s. 4). The Act and the Criminal Appeal Rules, 1908, made pursuant to s. 18 of the Act, form a complete code. In a case involving any point of exceptional importance either the Director of Public Prosecutions (q.v.) or the prosecutor or the defendant may, if they can obtain the certificate of the Attorney-General, appeal to the House of Lords (s. 1 (6)), but except in any such case the decision of the Court of Criminal Appeal is final. See SOLICITOR; VERDICT.

Criminal Conversation. Down to the enactment of the Matrimonial Causes Act, 1857, the common law action for criminal conversation (known as *crim. con.*) lay at the suit of a husband to recover damages against an adulterer. The action was in form abolished by s. 59 of the Act, but in substance it still exists. See ADULTERY; CO-RESPONDENT.

Criminal Information. See INFORMATION.

Criminal Law Amendment Acts, 1885 to 1922. These are the statutes 48 & 49 Vict. c. 69, and 2 & 3 Geo. 5, c. 20, and 12 & 13 Geo. 5, c. 56. See ABDUCTION; BROTHEL; CARNAL KNOWLEDGE; PROCURATION; INDECENT ASSAULT; RAPE.

Criminal Law Consolidation Acts. The popular title of the five great statutes, 24 & 25 Vict. cc 96-100. See CONSOLIDATION ACTS.

Criminal Lunatic. "A criminal lunatic means any of the following persons:—(*a*) any person for whose safe custody during His Majesty's pleasure, His Majesty or the Admiralty is authorised to give an order, and (*b*) any prisoner whom the Secretary of State or the Admiralty has, in pursuance of any Act of Parliament, directed to be removed to an asylum or other place for the reception of insane persons" (Criminal Lunatics Act, 1884, s. 16). See INSANITY.

Criminal Lunatic Asylum. An asylum appropriated by warrant under the Royal Sign Manual for the reception of criminal lunatics (Criminal Lunatic Asylums Act, 1860, s. 1). Broadmoor Criminal Lunatic Asylum is such an asylum.

Crimp. One who for profit decoys or entraps seamen for the merchant service. The trade sprang up in connection with the Royal Navy during the wars with Napoleon. As regards the Royal Navy, crimping has for long been unknown; and sailors in the merchant service are now protected from crimps by the Merchant Shipping Act, 1894, ss. 110, 111, 112, 213-219.

Croft. A small close or plot of ground adjoining a house and used either for pasture or arable by the occupant of the house. In some places it was called a ham. The use of the word is obsolete in England. See TOFT.

Crofter. This term, which is unknown to English law, means in Scotland a farmer holding from year to year in a "crofting parish" at a rent not exceeding £30 per annum.

Cross-action. When A. brings an action against B, and B, before final judgment is given in that action, brings another action against A in respect of a claim arising out of the same subject-matter, this second action is called a cross-action. Formerly it was not uncommon in Chancery practice for the defendant in a suit to bring a cross-bill against the original plaintiff, either for discovery or for some relief which he could not obtain in the original suit. The suits were then generally consolidated and one judgment given in the two. On the common law side also, before the Judicature Acts, a defendant who had a cross-claim against the plaintiff could make it only by instituting a cross-action. Now, however, the procedure by counter-claim (q.v.) has almost superseded cross-actions on both sides of the Court. As to cross-actions against foreign Governments, see STATE.

Cross-actions are still the ordinary practice in the Probate, Divorce and Admiralty Division in respect of damage by collision of ships (see R. S. C. Ord. 19, r. 3). See COLLISION; LIMITATION OF LIABILITY.

Cross-bill. See CROSS-ACTION.

Cross-bow. This in the sixteenth century was regarded as an undesirable substitute for the long-bow. See the statute 2 & 3 Edw. 6, c. 14 which restricted the use of cross-bows. See also ARCHERY.

Cross-examination. See EXAMINATION.

Cross Remainder. See REMAINDER.

Crossed Cheque. See CHEQUE.

Cross's Acts. The popular title of the Artizans and Labourers' Dwelling Improvement Acts, 1875 and 1879, which were introduced by Sir Richard Cross, then Home Secretary, who afterwards was raised to the peerage as Viscount Cross.

Crown; Half-crown. See GOLD COINS; SILVER COINS.

Crown Agents for the Colonies. These are the financial and commercial agents in the United Kingdom of the colonies which do not possess representative government, and of the protectorates controlled by the Colonial Office. They are responsible to the governments of the colonies for which they act, but they are appointed by the Colonial Secretary, who also exercises a general control over their

actions. They occupy a position somewhat analogous to that of, for instance, the Agents-General who represent the several Australian States; but such Agents-General are appointed by their own Governments and are not controlled by the Colonial Office as are the Crown Agents.

Crown Cases Reserved. See COURT FOR CROWN CASES RESERVED.

Crown Debts. See DEBTS.

Crown Lands. See DEMESNE.

Crown Office. See CROWN OFFICE IN THE KING'S BENCH.

Crown Office in Chancery was one of the offices of the High Court of Chancery now transferred to the High Court of Justice. The principal official is the Clerk of the Crown (q.v.).

Crown Office in the King's Bench was the office in which all the ministerial business of the Court of King's Bench originally and afterwards of the King's Bench Division in respect of its prerogative and criminal jurisdiction was transacted. It has now been transferred, together with its principal officer, the King's Coroner (q.v.), to the Central Office (q.v.), and is known as the Crown Office *simpliciter*. In it is now transacted, not merely the business on the Crown side (q.v.) of the Court, but also the greater part of the ministerial business relating to most of the matters, other than actions, disposed of by a single judge of the King's Bench Division. But it is not concerned with proceedings in bankruptcy or on the revenue side, or with parliamentary and municipal election petitions.

Crown of India, Order of. The Imperial Order of the Crown of India was founded in 1878 for ladies of or connected with India. Members can add "C.I." to their names.

Crown Paper; Crown Paper Days. Before the Judicature Acts the Crown Paper was a list of the cases on the Crown side of the King's Bench; and Crown Paper Days were the days set apart for the hearing of those cases.

Crown Side. The prerogative and criminal jurisdiction of the King's Bench Division is said to be on the "Crown side."

Cruelty. In the law of divorce, cruelty may be said generally to be where the husband has so treated his wife and manifested such feelings towards her as to have inflicted bodily injury, to have caused reasonable apprehension of bodily suffering, or to have injured health. Acts of cruelty to children committed in the presence of the mother are sometimes called constructive cruelty to her. Cruelty by the wife towards the husband generally requires to be of an aggravated character in order to give him a right to a judicial separation. See DISSOLUTION OF MARRIAGE; JUDICIAL SEPARATION.

Cruelty to Animals. Cruelty to animals was not illegal at common law, although such cruelty, exercised by anyone other than the owner of an animal, gave a right of action to the owner of a domestic animal if, and in so far as, the animal was injured. But from the middle of the last century several Acts were passed making various kinds of cruelty to various animals offences punishable summarily. The whole of the law on the subject is now to be found in the Protection of Animals Act, 1911, which repealed several pre-existing enactments, and in the Protection of Animals Act (1911) Amendment Act, 1912, which merely substitutes the word "three" for the word "six" in s. 1 (1) of the Act of 1911. These Acts make cruelty of any kind to either domestic animals or animals kept in captivity an offence punishable on summary conviction.

The Diseases of Animals Act, 1894, s. 22, as amended by the Poultry Act, 1911, contains provisions which are calculated to prevent unnecessary suffering to animals; and so also do the Acts relating to vivisection (q.v.).

The Animals (Anæsthetics) Act, 1919, provides that horses, dogs, cats and bovines must be anæsthetized while any of a number of specified painful operations is being performed. The Act (see s. 5) does not apply to such experiments as are referred to under VIVISECTION. See COCK-FIGHTING; INJURED ANIMALS.

Cruelty to Children. Abandoning or exposing a child under the age of two years so as to endanger its life or health is an indictable misdemeanour (Offences against the Person Act, 1861, s. 27). Assaults of an aggravated nature upon children as well as upon females are punishable summarily with heavier penalties than assaults on other persons (*ib.*, s. 43). The main enactment as to cruelty to children is now the Children Act, 1908, ss. 12-35, which by s. 12 (1) provides that "if any person over the age of sixteen years, who has the custody, charge or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons or exposes such child or young person, or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child or young person unnecessary suffering or injury to his health

(including injury to or loss of sight, or hearing, or limb, or organ of the body and any mental derangement) that person shall be guilty of a misdemeanour " triable either summarily or on indictment. That section reenacts with slight alterations s. 1 (still unrepealed) of the Prevention of Cruelty to Children Act, 1904. The Act of 1904, s. 2, prohibits street performances or street trading between 9 p.m. and 6 a.m. by a boy under fourteen or a girl under sixteen; prohibits also any performance for profit or any street trading by a child under eleven; and forbids the training of children under sixteen as acrobats, contortionists or circus performers, or for any dangerous performance.

See BEGGAR; CHILD; DANGEROUS PERFORMANCES; DRUNKENNESS; IN CAMERA; YOUNG PERSON.

Cry (or Cri) de pais. A hue and cry (q.v.) anciently raised by the country, or community, in the absence of a constable, that officer being the person who raised the hue and cry properly so called.

Cucking-stool. An engine used anciently for the punishment chiefly of scolds and quarrelsome women and also of brewers and bakers guilty of adulteration. It consisted of a chair into which the offender was fastened and which was then lowered into water, the water being sometimes of an unsavoury character, as appears from the fact that in Domesday the cucking-stool is called *Cathedra stercoralis*. Other names were tumbril or tumborella, trebucket and castigatory. It was one of the means of correction used by the court leet (q.v.). See SCOLD.

Cui ante divortium was an action by which a divorced woman could recover her lands if they had been aliened during the coverture by her husband, *cui ante divortium ipsa contradicere non potuit* (against whom she could not bring proceedings before the divorce). If he died before bringing the action, her heir could bring an action called a *sur cui ante divortium*. They were both abolished by the Real Property Limitation Act, 1833, s. 36.

Cuicunque aliquis quid concedit concedere idetur et id sine quo res ipsa esse non potuit (11 *Rep.* 52). (The grantor of anything to another grants that also without which the thing granted would be useless.) Thus, if a man grant to another land which is surrounded by other land of the grantor, then there is impliedly granted also a right of way over such other land.

Cui in vitâ was an action by which a widow could recover her lands if they had been aliened during the coverture by her husband, *cui in vitâ suâ ipsa contradicere non potuit* (whom while he was living she could not sue). If she died before bringing the action her heir had an action called *sur cui in vitâ*.

They were both abolished by the Real Property Limitation Act, 1833, s. 36. See DISCONTINUANCE.

Cuilibet in suâ arte perito est credendum (*Co. Litt.* 125). (One who is skilled in his profession is to be believed.) This merely means that expert evidence is admissible.

Cui licet quod majus non debet quod minus est non licere (4 *Co.* 23). (He who has authority to do the more important act should not be debarred from doing what is of less importance.) Compare MAJUS DIGNUM, etc.

Cujacius. Jacobus Cujacius (Cujas) was born at Toulouse in 1522, studied there under Ferrier, taught law from 1547, principally at Bourges, Turin and Paris, until his death at Bourges on 4th October, 1590. His principal works are notes and commentaries on the different portions of the Corpus Juris Civilis, on the Basilica, and on the Decretals; and the *Usus Feudorum*. Collections of his works have been published at Paris, Naples and other places.

Cujus est dare ejus est disponere (*Wing. Max.* 53). (He who gives anything can also direct how the gift is to be used.) The maxim was literally true with regard to feudal grants; and with regard to them another form was *tenor est qui legem dat feudo* (the tenor of the feudal grant is what regulates the grant). It is still true to the extent that a donor may attach to his gift any conditions which are not illegal or impossible.

Cujus est instituere ejus est abrogare. " We say, in general, he that institutes may also abrogate, most especially when the institution is not only by, but for, himself. If the multitude, therefore, do institute, the multitude may abrogate; and they themselves, or those who succeed in the same right, can only be fit judges of the performance of the ends of the institution " (Sidney on *Government*, p. 15).

Cujus est solum ejus est usque ad cœlum (*Co. Litt.* 4). (Whose is the soil, his is also that which is above it.) Coke might have added *et ad inferos*: for he who owns the soil owns not only everything above the surface but also everything underground, so that the making of a tunnel or of a tube railway, no matter at what depth, is a trespass upon any land beneath which it passes unless the tunnel, etc., is made under statutory powers.

Culagium. This anciently meant the laying up of a ship in dock for repair.

Culpâ caret, qui scit, sed prohibere non potest (*D.* 50, 17, 50). (He is free from fault who knows but cannot prevent.)

Culpa est immiscere se rei ad se non pertinenti (*D.* 50, 17, 36). (It is a fault for a man to meddle in a matter not pertaining to him.) This was a maxim of the Roman law.

Culprit. A prisoner at the bar who has pleaded not guilty. The clerk of the court, after the plea of not guilty, anciently said: "*Qu'il paroit* (may it appear so); how will you be tried?"; to which the reply of the prisoner was, "By God and my country" (q.v.). The words *Qu'il paroit* came to be corrupted into "culprit," and that word came to mean the prisoner.

Cultivation, Freedom of. Notwithstanding any custom (q.v.) of the country or agreement to the contrary, a tenant of an agricultural holding has full freedom of cropping and of disposing of the produce of arable land, but he must return to the holding the full equivalent manurial value of any crops removed from the holding in contravention of such custom or agreement; but this right of disposing of produce does not apply during the last year of the tenancy or, in the case of a tenant from year to year, to any time after he has given or received the notice to quit upon which he eventually quits; and if the rights of the tenant under this section are exercised in a way injurious to the holding the landlord can recover damages, to be fixed, in default of agreement, by arbitration, and can obtain an injunction (Agricultural Holdings Act, 1908, s. 26).

Cultura. Anciently this meant a plot of cultivated land.

Culvertage; Culvertagium. Anciently this meant the forfeiture to a lord of the lands of a tenant.

Cumberland Square. See HAYMARKET.

Cum duæ cognationes, etc. See AFFINITY.

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est (*Co. Litt.* 112). (Where two clauses in a will are inconsistent, whichever of them comes the later in the will is to be acted on.)

Cum in testamento ambigue aut etiam per peram scriptum est, benigne interpretari debet et secundum id quod credibile est cogitatum credendum est (*D.* 34, 5, 24). (Where an ambiguous, or even erroneous, expression occurs in a will, it should be construed liberally and in accordance with what the testator probably meant.)

Cum par delictum est duorum semper oneratur petitor et melior habetur possessoris causa (*D.* 50, 17, 154). (When both parties are in fault the plaintiff must always fail, and the case of the person in possession is the stronger.) This is a maxim of the Roman law, but it applies also in our law; and so also, where money has been paid on foot of an illegal contract an action for its recovery will not lie.

Cum testamento annexo. See ADMINISTRATOR.

Cumulative signifies that two things are to be added together or taken one after another, instead of one being a repetition or in substitution of the other. Thus where a testator gives two legacies of unequal amount to the same person, even by the same testamentary instrument, they are in general cumulative, that is, the legatee takes both. So when two statutes provide different remedies, penalties or punishments for the same act or offence, it is a question of construction whether they were intended to be cumulative or whether it was intended that only one could be exercised or imposed in a given case.

Cuneus. A mint or place to coin money.

Cuntey-cuntey. A species of trial mentioned, but not described, by Bracton. It is stated by Jacob to have been a trial by jury: but in the time of Bracton (q.v.) trial by jury was a different thing from what we now have.

Curari. The same as *urari* (q.v.).

Curate. A temporary or stipendiary curate is a clerk in Holy orders who assists a rector or vicar, and is paid by him. In some cases the bishop may compel an incumbent to employ a curate. A perpetual curate officiates in a parish or district to which he is nominated by an impropriator or lay rector. A curate of the latter class seems now to be properly called a vicar. See also CHAPEL.

Curator sometimes means the same thing as "guardian." By the Forfeiture Act, 1870, where a person has been convicted of treason or felony the Crown is empowered to appoint an administrator, who looks after the property of the convict and hands it over to him or his personal representative on completion of the sentence or on pardon or death; and where no administrator of his property has been appointed, an interim curator of the property may be appointed by the justices of the peace of the place where the convict last resided. The interim curator has powers similar to those of an administrator, but can exercise some of them only with the sanction of the justices or a Court.

Curator bonis. This is a person appointed under Scotch, foreign or colonial law to exercise functions analogous to those which in England and in some of the colonies are exercised by the committee of a lunatic. A duly appointed *curator bonis* of a lunatic in Scotland has, as regards personal property in England of such lunatic, all the powers of a committee (Lunacy Act, 1890, s. 131 (3)); and under the Bankruptcy Act, 1914, s. 149, a lunatic may act by his *curator bonis* in an English bankruptcy, but the *locus standi* of the curator is gone once a committee is appointed according to English law.

Cure. See AID BY VERDICT.

Curfew; Curfeu. A bell which by order of the Conqueror was rung at 8 p.m. Thereupon everyone covered up his fire—fires were then on open hearths—and extinguished his lights. The obligation to do anything when curfew rang ceased in the reign of Henry I.; but even to the present day the curfew bell is rung in certain places at eight or nine o'clock every night.

Curia advisari vult. Literally "the Court wishes to be advised"; abbreviated to *cur. adv. vult*, which, when placed before the judgment in the report of a case, means that judgment was not delivered immediately.

Curia claudenda, De. An obsolete writ which lay to compel a man to fence his land. It might be sued in the Court of Common Pleas or before the sheriff in the old County Court.

Curia domini. The hall of the lord, in which all his tenants assembled for the manorial courts.

Curia ducis. The body which, while Normandy remained annexed to the English Crown, corresponded in Normandy to the *Curia regis* in England.

Curia palatii. See PALACE COURT.

Curia Parliamenti suis propriis legibus subsistit (4 *Inst.* 50). (The Court of Parliament is governed by its own peculiar laws.) This is quite true. There is no Court in this country which can revise any decision of Parliament.

Curia penticiarum. A Court at Chester, held by the sheriff in the pentice or penthouse, an ancient structure beneath the Church of St. Peter. The penthouse was demolished in 1806.

Curia regis. See AULA REGIS.

Curnock. An ancient customary measure of capacity, stated by Jacob, with a reference to Fleta, to have contained four bushels. That seems to have been correct as regards barley or oats, but for wheat it contained only three bushels, while for coal it varied from ten to fifteen.

Currency Notes. The legal description of what are popularly known as Treasury notes. They are issued pursuant to the Currency and Bank Notes Act, 1914, s. 1 (1), which enacts that: "The treasury may . . . issue currency notes for one pound and for ten shillings, and those notes shall be current in the United Kingdom in the same manner and to the same extent and as fully as sovereigns and half-sovereigns are current and shall be legal tender in the United Kingdom for the payment of any amount."

Cursing. This was no offence at common law. Under the statute 21 Jac. 1, c. 20, it was made punishable with a fine of one shilling or with the stocks (q.v.) in default of payment. The Profane Oaths Act, 1745, repealed the Act of James and made each oath or curse punishable with a fine of one shilling for a day labourer, soldier or seaman, of two shillings for every other person under the rank of gentleman, and of five shillings for every person of or above the rank of gentleman, the penalties to be doubled for a second offence and trebled for a third offence. The Act does not seem to apply to women; but it applies to cursing or swearing anywhere, though not to obscene language. It is seldom enforced.

The use, to the public annoyance, of profane or obscene language in any street is punishable summarily, in the Metropolitan Police District, under the Metropolitan Police Courts Act, 1839, s. 12, and in all urban sanitary districts and in certain rural districts under the Town Police Clauses Act, 1847, s. 28.

Cursing, etc., in any street, public place or land adjoining such street or place may also be an offence under bye-laws made pursuant to s. 28 of the Municipal Corporations Act, 1882, and the Local Government Act, 1888.

Cursitor Baron of the Exchequer. This was one of the members of the old Court of Exchequer. His duties, as enumerated in *Manning's Exchequer Practice*, at p. 322, were occasionally numerous and important, but purely ministerial; and he exercised no judicial functions. He was not a Baron (q.v.) of the Exchequer in the ordinary sense. The last holder of the office, to which he was appointed in 1824, was Mr. George Bankes. Then, and until his death in 1856, he was a member of the House of Commons. He was cursitor baron until his death; but that did not prevent him from at the same time holding many

important political offices. Towards the end of the existence of the office there were in fact practically no duties attached to it, the duty of examining the accounts of the sheriffs—which was the only one of importance remaining in 1834, having been taken out of the hands of the cursitor baron by the Fines Act, 1833 (3 & 4 Will. 4, c. 99), s. 2; and when Mr. Bankes died, the statute 19 & 20 Vict. c. 86 at once abolished the office and provided that anything which might have been done by the cursitor baron should be done by the Court of Exchequer, or by any officer thereof, or by any "baron of the coif" (q.v.). It appears from the *Commons Committees Report* (1803), Vol. 13, p. 307, that in 1798 the office was worth a little under £400 a year.

Originally the barons (or judges) of the Court of Exchequer were not lawyers, but officials connected with the fiscal side of the Exchequer who had been raised to the bench; but the Chief Barons from about the year 1400 were lawyers, who, for a period of a hundred years, were also Chief Justices of the Common Pleas. From 1579, however, the barons, like the other judges, were serjeants-at-law and ranked in every way with the judges of the King's Bench and the Common Pleas; and it was found necessary to have on the bench with the barons someone who had some knowledge of fiscal matters: so the cursitor baron was appointed for the first time in 1610.

Cursitors (clerici de cursu) were clerks in the Chancery office whose duties consisted in drawing up those writs which were of course *de cursu*, whence their name. These "writs of course" were the writs known as original writs (see WRIT), and were abolished by the statute 5 & 6 Will. 4, c. 82, s. 10, which transferred to the clerks of the Petty Bag Office the "few remaining duties" of the cursitors. (See PETTY BAG.) On two out of the four circuits which made up the Courts of Great Session for Wales (see WALES), there were minor officials known as cursitors (*Commons Committees Reports*, (1803), Vol. 13, p. 206).

Cursus curiæ est lex curiæ (3 *Buls.* 53). (The practice of the Court is to be regarded as the law of the Court.) This was said by Croke, J., in 1615. Lord Coke in the next line of the report declares "This is an invention of the devil designed to crush the souls of men"; but he seems to have referred to the Star Chamber procedure.

Of course, no practice of the Court can be upheld if it be without or in excess of jurisdiction or contrary to natural justice or to express enactment.

Cursus scaccarii. The course of the Exchequer, that is to say, the procedure of the Exchequer as a Court concerned with the recovery of moneys due to the king. See 15 M. & W., at p. 693.

Curtesy. Where a man marries a woman seised of land in fee-simple or fee-tail, and has by her issue born alive capable of inheriting the land as heir to her, notwithstanding the issue may afterwards die, yet if the husband survives the wife he shall hold the land during his life. Coke explains that "he is called tenant by the curtesie of England, because this is used in no other realme but in England onely." If land is given to a woman and the heirs male of her body, and she marries, and has issue a daughter and dies, the husband is not tenant by the curtesy, because the daughter by no possibility could inherit her mother's estate in the land.

Where a married woman is entitled to an equitable estate of inheritance to her separate use and does not dispose of it by deed or will, the husband is entitled to equitable curtesy.

By the custom of gavelkind a man may be tenant by the curtesy without having any issue.

And by the special custom of some manors the widower of a deceased female copyholder is entitled to a customary curtesy.

Copyhold enfranchised under the Copyhold Act, 1894, is, except in the case of a husband married before the enfranchisement, subject only to such curtesy as applies to freeholds (s. 21).

Under the Settled Land Act, 1882, s. 58 (1) (viii.), a tenant by the curtesy has the power of a tenant for life.

Curtilage is a court-yard adjoining a messuage, "*i.e.*, a little garden, yard, field or piece of void ground, lying near and belonging to the messuage." By the grant of a messuage in a deed the curtilage passes without being expressly mentioned.

Curtiles terræ. Court lands (q.v.).

Custagium; custantia. Anciently this meant costs.

Custode admittendo; Custode removendo. Writs which anciently lay for the appointing or removing of a guardian.

Custodes. See WARDENS.

Custodes Judæorum. These were judges of the Exchequer, although they were not termed Barons, who were first appointed in 1198 for the purpose of deciding cases affecting Jews, which would otherwise have come before the ordinary Courts; and they constituted the Exchequer of the Jews (q.v.).

Custodes libertatis Angliæ authoritate Parliamenti. (The Guardians of the Liberties of England by the Authority of Parliament.) This was the title of writs of summons from the execution (30th January, 1649) of Charles I., up to the proclamation (16th December, 1653) of Oliver Cromwell as Protector. The statute 12 Car. 2, c. 3, provided that writs so entitled, and those afterwards entitled in the names of the Protector, before 5th May, 1660, were not for that reason invalid.

Custodes pacis. Conservators of the peace (q.v.).

Custodiam Lease. Anciently this meant a grant by the king, under the Exchequer Seal, by which Crown lands were demised or granted to some person as custodian or lessee thereof.

Custodian Trustee. Under the Public Trustee Act, 1906, s. 4, the Public Trustee, or any banking or insurance company or other body corporate entitled (by rules made under that Act) to act as custodian trustee, may be appointed custodian trustee of any trust; and the appointment may be made (*a*) by the Court, (*b*) by the creator of the trust, or (*c*) by the person having power to appoint new trustees.

The custodian trustee holds the trust property as if he were sole trustee, but, except as regards that matter, the appointment of a custodian trustee does not in the least affect the power and duties of the ordinary trustees. His chief function is to act as a "safe deposit" for title deeds, share certificates, etc.

Custody. Where the owner of a moveable thing gives it to his servant to keep until he wants it back, the servant is said to have the custody of it and the master retains the possession. But if a thing is delivered by a stranger to a servant on behalf of his master, then the servant has the possession and not the mere custody of it.

See EMBEZZLEMENT.

Custom. A custom is a rule of conduct which a given class of persons observe spontaneously or by tacit consent.

Customs are of two classes, namely, those which form part of the law of England, and those which operate by modifying contracts entered into by private persons.

Customs which form part of the law of England are commonly divided into three kinds, namely, general, local or particular, and personal.

General customs, or customs of the realm, are the universal rule of the whole kingdom, and form the common law in its stricter and more usual signification; such are the rules as to the inheritance of land, the solemnities and obligations of contracts, the liabilities of common carriers, etc., so far as they have not been altered by statute.

Particular or local customs are those which only affect land situate within particular districts; such are the customs of gavelkind and borough English, which govern the descent of land in certain places,—the customs which give the inhabitants of a certain place rights over land in the neighbourhood (see EASEMENT; RECREATION),—the custom of tin-bounding in Cornwall,—and the customs relating to lands held by copyhold and customary freehold tenure. The customs of gavelkind and borough English are judicially noticed; but to make any other particular custom good, it must be reasonable and must have been peaceably and continually observed from time immemorial; it is of course not necessary to prove that it has existed from time immemorial, for proof of its existence for, say, twenty years is often sufficient evidence of its immemorial existence.

The principal, if not the only, custom having the force of law and affecting a particular class of persons is that known as the custom of merchants (*lex mercatoria*, or law merchant), sometimes called the general custom of merchants to distinguish it from usages or customs of trade (*infra*). It resembles the common law in following precedents, for, said Lord Mansfield, "the custom of merchants, when established and settled by known decisions, is the general law of the kingdom, and therefore ought not to be left to a jury after it has been already settled by judicial determinations; but where it is doubtful it may be fit to ascertain from merchants the facts." The rules as to bills of exchange, cheques, and other negotiable securities, form an important part of the law merchant: a person who makes use of a mercantile instrument, such as a bill of exchange, becomes to that extent subject to the custom of merchants, in so far as such custom is not inconsistent with the provisions of the Bills of Exchange Act, 1882 (see s. 97), which indeed is itself a codification, subject to modifications, of the law merchant as to bills of exchange.

Customs which modify contracts entered into by private persons are those which have prevailed so long and so uniformly in transactions between persons engaged in a particular occupation, that when two of such persons enter into a contract relating to their occupa-

tion, and not containing anything inconsistent with the custom, they are presumed to have contracted with reference to it, and it then forms part of the contract so far as it is applicable.

Customs modifying contracts are generally divided into two classes.

Usages or customs of trade are customs prevailing in a particular trade or business: thus, if by the usage of bankers, stockbrokers, etc., bonds or scrip certificates of a certain kind are treated as negotiable, a person who has deposited them with a stockbroker cannot claim them from a *bonâ fide* holder for value, who has acquired them by delivery from the stockbroker. Such usages or customs may not only annex terms to a contract which is not inconsistent with them, but may also control the interpretation of a contract which is complete in itself but which contains terms used in a technical sense.

Customs of the country are customs relating to agriculture and the tenure of land for agricultural purposes, prevailing within a certain district. They are of two principal kinds: customs relating to and regulating the course of husbandry, and the periods of taking farms; and customs which modify the rule of law that the land, together with everything that is in the soil or attached to it, at the determination of a tenancy, belongs to the landlord and not to the tenant.

Thus where the defendant granted to the plaintiff a lease of a farm situate within a parish where there was "an ancient and laudable" custom for tenants of lands in certain cases to cut and take away after the expiration of the lease crops sown by them before the expiration of the term, but the lease was silent on the question of away-going crops, it was held so far back as 1779 that the custom formed part of the agreement between the parties, being supplemental to the lease. Customs of this kind also regulate the rights of outgoing and incoming tenants, which vary infinitely in different parts of the country.

Such customs have been varied by certain Acts and particularly by the Agricultural Holdings Act, 1908; but that Act expressly provides by s. 46 that all customs of the country, except as otherwise provided by the Act, are still to have effect. See CONSUETUDO DEBET, ETC.

Customary Freeholds. In the proper sense of the term customary freeholds are a privileged and superior kind of copyholds. The tenants of these lands hold by copy of court roll according to the custom of the manor, but they are not said to hold at the will of the lord. This tenure is found almost solely in the north of England, where it is not unfrequently known by the name of "tenant right" (q.v.).

Sometimes the term is inaccurately applied to lands which are really freehold, but which are subject by custom to some peculiar and customary mode of alienation: as in the case of lands held of a certain manor in which there was a custom that every feoffment should be void unless it were presented at a manorial court within a certain time.

Customary Tenements. Copyholds (q.v.).

Customer. In the statute 11 Hen. 7, c. 13, this appears to be used as a synonym of searcher (q.v.).

Custom of London. Under what was known as the Custom of London a freeman could, from the time of Littleton, devise his freeholds by will; but, on the other hand, until the enactment of the statute 11 Geo. 1, c. 18, s. 17, he could bequeath (1) only one-third of his personalty if he left a wife and children, the remaining two-thirds going, as to one-half thereof to the wife, and as to the residue, to the children; (2) half of his personalty if he left either a wife or children, the remaining half going to the wife or the children, as the case might be. Moreover, until the enactment of the statute 19 & 20 Vict. c. 94, the rules as to distribution of the personal estate of an intestate differed in the city from those applying in other places. Under the custom also, a woman trading separately from her husband was, in point of law, in the same position as a *feme sole*, that is to say, she alone was answerable for her trade debts. There were other special customs in the city: see, e.g., FOREIGN ATTACHMENT.

The Courts of common law took judicial notice of the Custom of London.

See DEAD MAN'S PART; WIDOW'S CHAMBER.

Customs are the duties or tolls payable upon merchandise exported from and imported into the country. The proceeds form part of the Consolidated Fund (q.v.). See COMMISSIONERS OF CUSTOMS AND EXCISE.

Customs and Services. Anciently this was a writ which lay for a lord to compel a tenant to observe and perform the customs and services upon which he held his land.

Custos brevium. (The keeper of the writs.) This was an officer of the old Court of Common Pleas whose function it was to receive and file all writs returnable to that Court. The office, as well as a large number of similar offices, was abolished by the Superior Courts Offices Act, 1837, s. 1, Sch. A. That Act entrusted

to clerks of the modern type the remaining duties of a number of archaic officers.

Custos brevium et recordorum. (The keeper of the writs and records.) An officer of the old Court of King's Bench, whose duties were somewhat similar to those of the *Custos brevium* (q.v.) in the Court of Common Pleas. Both offices were abolished by the one Act.

Custos morum. (The guardian of morals.) Anciently the Court of Star Chamber (q.v.), and subsequently the Court of King's Bench, were the Courts regarded as specially entrusted with the enforcement of good conduct, and each Court in succession was sometimes called the *Custos morum*.

Custos placitorum coronæ. The officer who kept the pleas of the Crown (q.v.) in the time of Bracton.

Custos rotulorum is the first justice of the peace and first civil officer of the county for which he is appointed. As his name implies, he is nominally keeper of the rolls or records (writs, indictments, etc.) under the commission of the peace, but in practice they are kept by the clerk of the peace (q.v.). The office is always held either by the Lord Lieutenant (q.v.) of the county or by some other person of position.

Custos spiritualium. (The guardian of the spiritualities.) The person or body which exercises spiritual or ecclesiastical jurisdiction in a diocese during a vacancy in the see. By the canon law the dean and chapter are the guardians; but for most of the sees the archbishop is by prescription the guardian.

Custos statum hæredis in custodiâ existentis meliorem, non deteriorem, facere potest (7 *Co.* 7). (A guardian can make the estate of an heir who is under his wardship better, but not worse.) The guardian referred to was the guardian in chivalry.

Custos temporalium. (The guardian of the temporalities.) Anciently this was a person to whose custody a vacant see or abbey was committed by the king as supreme lord, and who, as steward of the goods and profits thereof, was to give an account to the king's *escheator*, who rendered an account thereof into the Exchequer. His trust continued till the vacancy was supplied by a successor, who obtained the king's writ *de restitutione temporalium*, which was sometimes after and sometimes before consecration, though more frequently after.

Custuma antiqua sive magna. (The old or large customs.) These were the customs anciently payable on the export of wool, woollen cloths, leather, and other products of this country.

Custuma parva et nova. (The small and new customs.) These were anciently customs payable both on exported and imported goods by aliens.

Cutlers. Amongst the minor City Companies (q.v.) is the Cutlers' Company. This is to be distinguished from the Sheffield "Company of Cutlers in Hallamshire," incorporated by the statute 21 Jac. 1, c. 31, and dealt with in many subsequent Acts, of which the latest are the Trade Marks (q.v.) Acts, 1905 to 1919. This Sheffield company is also known as the Cutlers' Company; see, for instance, s. 63 of the Trade Marks Act, 1905.

Cutter of the Tallies. Anciently this was an officer of the Exchequer who provided wood for the tallies (q.v.) and cut the notches on them.

Cycling. Bicycles and tricycles are "carriages" within the meaning of the Highway Act, 1875, s. 78—so also, for that matter, are perambulators, but *de minimis*—and persons using them can, in a proper case, be convicted of furiously driving them. Under the Local Government Act, 1888, s. 85, there must be on each bicycle or tricycle a lighted lamp, visible from the front, between one hour after sunset and one hour before sunrise, and the rider must, when overtaking anything on the road, give warning by a bell, whistle, etc. A motor cycle is a motor car (q.v.).

Cyne-bot; Cyne-gild. The part received by the nation out of the fine payable for the slaying of a king in Saxon times; the rest went to the relatives of the monarch. See WER.

Cyning. Anglo-Saxon for "king."

Cy-près. Where a person has expressed a general intention, and also a particular mode in which he wishes it carried out, but the intention cannot be carried out in that particular mode, the Court before whom the matter comes will in certain cases direct the intention to be carried out *cy-près*, that is, as nearly as possible in the mode desired.

Thus, if a testator shows an intention that part of his property should be devoted to charitable purposes, but he either does not effectually indicate the particular manner in which he wishes it applied, or indicates a mode of application which is or subsequently becomes impracticable, the Court will execute the trust *cy-près*, by applying the property to charitable purposes similar to those (if any) mentioned by the testator. (See SCHEME.) So where an executory trust, if carried literally into effect, would be void for illegality, as where it would

infringe the rule against perpetuities, the Court, in order to carry the testator's intention into effect as far as possible, or, as it is termed, *cy-près*, will direct a settlement to be made as strictly as the law permits.

Cyrographum. A chirograph (q.v.).

D

D.B.E. See BRITISH EMPIRE, ETC.

D.S.O. See DISTINGUISHED, ETC.

Da. Law-French for "yes."

Dagenham-breach. The statute 12 Ann. st. 2, c. 13 (*Statutes at Large*) recited that in the year 1707 "there happened a great breach in the walls or banks of the levels of Havering and Beckenham in the county of Essex" with the result that a sandbank had been formed in the Thames so that the navigation of the river was "in danger of being utterly destroyed"; and the statute then proceeded to impose, for ten years from 10 July, 1714, certain duties on ships entering the port of London. These duties were known as the Dagenham-breach: the proceeds were presumably—though the Act does not say so—to be applied in repairing the breach.

Dairies. The law as regards dairies is now contained mainly in the Milk and Dairies (Consolidation) Act, 1915, and the Milk and Dairies (Amendment) Act, 1922, to which reference should be made.

Under the Infectious Diseases Prevention Act, 1890, s. 4, the local authority of a district in which that Act has been adopted may prohibit a dairy from supplying milk in the district if they are satisfied that milk from the dairy has caused infectious disease.

In a district to which Part IV. of the Public Health Acts (Amendment) Act, 1907, has been applied, a dairyman supplying milk which the medical officer reasonably believes to have caused infectious disease may be required to furnish a list of his sources of supply (s. 53), and every dairyman supplying milk within the district, from premises whether within or without it, must notify all cases of infectious disease amongst all persons connected with the dairy (s. 54). As to the meaning of "dairyman" and "dairy," see s. 13.

Dakir. The *Assisa de Ponderibus, etc.* (q.v.) enacted that a "dakir" of hides should consist of ten hides, and that twenty "dakirs" should make a "last." This was not the only measure known as a last. The enactment above mentioned provided that twelve sacks of wool should make a last of wool, and that ten thousand (really 12,000) herrings should make a last of herrings.

Dale; Dalus; Dailus; Daila. Synonyms of DOLE (q.v.).

Damage is where one person has done a wrongful act for which the person injured may obtain compensation in an action.

Damage in law, or general damage, is where no actual damage has been caused, but where the person whose right has been infringed brings an action to vindicate that right: thus if A enters on B's land without permission, B may bring an action and recover nominal damages against A for the trespass, though no actual injury to the land was caused, for repeated trespasses on the land might eventually give rise to an easement or right over the land. So A may recover nominal damages against B for a libel although it caused A no pecuniary loss.

Actual, or special, damage is where the wrongful act has caused a loss or injury which can be assessed in money: as where A negligently drives a carriage so as to cause bodily injury to B, whereby B is prevented from carrying on his business and put to medical expense; or where a slander injures a person in his business.

"Special damage" is also used in the sense of extraordinary damage: as where a person suffers damage from a public wrong (*e.g.* a public nuisance), differing in kind from the damage suffered by the community in general.

Consequential damage is that which is either the natural result of the wrongful act, according to the usual course of things, or, in the case of a breach of contract, such damage as may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it. Thus medical expenses incurred in consequence of an injury may be recovered; again, in an action for the breach of a warranty of a chain cable, it was held that the plaintiff might recover the value of the anchor to which the cable was attached and which was lost by the breaking of the cable. See REMOTENESS.

Damage-cleer; Damna clericorum. A fee of, in the Court of Common Pleas, ten per cent., and in the Courts of King's Bench or Exchequer, five per cent., upon the amount of all damages recovered to an amount exceeding five marks in actions on the case, covenant, trespass, assault and battery, battery, etc., which the plaintiff had to pay to the prothonotary (q.v.) or the chief officer of the Court before he

could have a writ of execution. The fee was abolished by the statute 17 Car. 2, c. 6.

Damage-feasant. See DISTRESS.

Damages are a sum of money adjudged to be paid by one person to another as compensation for a loss sustained by the latter in consequence of an injury committed by the former. The test by which the amount of the damages is ascertained is called the measure of damages. Thus where a vendor sues his vendee for breach of contract for the sale of goods, the measure of damages is the price of the goods if the property in them has passed to the vendee, or the difference between the contract price and the market price at the time of the breach if the vendor has re-sold the goods. As to when interest is payable as damages, see INTEREST.

When the parties to a contract agree that on a breach of its provisions the one shall pay to the other a specified sum of money, the question frequently arises whether that sum is merely a penalty (q.v.), or whether it is liquidated damages, that is, a sum agreed to be paid on the breach in order to save the trouble and expense of ascertaining the damage actually sustained. The language in which the provision is expressed is immaterial if its true nature is apparent. Thus where A agreed to do certain services for B, for which B agreed to pay him £3 6s. 8d. per day, and the contract stipulated that if either party should commit a breach of any part of it he should pay the other £1,000 as "liquidated and ascertained damages, and not a penalty or penal sum," it was held that on a breach the plaintiff was entitled to recover only the damage actually sustained, and not £1,000, because otherwise, if B had failed to make a single payment of £3 6s. 8d., A would have become entitled to £1,000 as damages. On the other hand, where a lease stipulated that the lessee should pay £5 for every acre of meadow land which he should plough up, this was held to be liquidated damages and not a penalty.

Nominal damages are damages to such a small amount (*e.g.* a farthing) as to show that they are not intended as any equivalent or satisfaction to the party recovering them. They are given when the plaintiff in an action for an invasion of his right establishes his right but does not show that he has sustained any damage.

Exemplary or vindictive damages are damages given not merely as pecuniary compensation for the loss actually sustained by the plaintiff, but likewise as a kind of punishment to the defendant, with the view of preventing similar wrongs in future, as in actions for malicious injuries, fraud, seduction, oppression, continuing nuisances, etc. See AGGRAVATION.

As to excessive damages, see TRIAL; see also DOUBLE DAMAGES; INQUIRY; INQUIRY, WRIT OF.

See QUANTUM DAMNIFICATUS.

Dame is the legal title of the wife or widow of a knight or baronet, and also of ladies who have been made in their own right Dames (whether Dames Grand Cross or Dames Commander) of the Order of the British Empire.

Damna. Damages. This, the Latin equivalent (*damna clericorum*) for damage-cleer (q.v.), meant the damages which were the fee of the clerks.

Damnify; Damnification. To damnify is to cause loss or injury to another, and damnification means the suffering of loss or injury.

Damnosa hereditas. In the Roman Law this meant an inheritance which was a source of loss rather than of profit. The term is informally applied in English law—to which the *damnosa hereditas* is not formally known—as meaning property which the trustee in bankruptcy will disclaim under the Bankruptcy Act, 1914, s. 54, as not being advantageous to the creditors.

Damnum. Loss; damage; harm. See INJURIA.

Damnum absque injuriâ is a loss which does not give rise to an action of damages against the person causing it: as where a person blocks up the windows of a new house overlooking his land, or injures a person's trade by setting up an establishment of the same kind in the neighbourhood.

Damnum sentire non videtur qui sibi damnum dedit (*D.* 50, 17, 204). (A man is not deemed to have suffered damage in law where he himself has caused the damage.)

Damnum sentit dominus. (The lord suffers the damage, the loss falls on him who is in law the owner.) This expresses the general rule applicable to the case of the accidental destruction of goods contracted to be sold: the rule is that, in the absence of any agreement to the contrary, the loss usually falls upon the buyer or the seller according as the property in the goods has or has not passed. See RES PERIT DOMINO, and compare MORA DEBITORIS, ETC.

Damnum sine injuria esse potest (*Hale. Max.* 12). (There may be damage or loss inflicted without any act being done which the law deems an injury.) The most ordinary case is where a man sets up a shop in order to

attract the customers of another shop. For such damage as may be caused in such a case no action can be maintained. The maxim *Ubi jus ibi remedium* does not apply, for there is no *jus*, no legal right to demand that the act which causes the damage shall not be done, and therefore there is no *remedium*.

Dancing-house. A house to which persons on payment are admitted for the purpose of dancing. Such a house, if within twenty miles of London or Westminster, requires to be licensed (Disorderly Houses Act, 1751) by the county council in the administrative county of Middlesex (Music and Dancing Licences (Middlesex) Act, 1894, s. 2 (1)), and elsewhere by quarter sessions (Disorderly Houses Act, 1751, s. 2). Outside the twenty-mile radius, it must be licensed under s. 51 of the Public Health Acts (Amendment) Act, 1890, in any district to which that Act has been applied. Licensing is also required under various local Acts.

None of the enactments relating to dancing (and music (q.v.)) apply to theatres conducted under letters patent or under licence from the Crown, or from the Lord Chamberlain.

Danegeld; Danegelt; Danegold. A tax, at first of one shilling and afterwards of two shillings, on every hide of land, which was levied in Anglo-Saxon times to meet the expenses caused by the Danish invasions. The tax was continued after the Conquest, although the risk of Danish raids had ceased. In 1084 William the Conqueror increased the rate to six shillings per hide and caused the *Inquisitio Geldi* (q.v.) to be made. The tax disappeared in the reign of Stephen.

Danelage. The laws of the Danish part of the kingdom in the early part of the tenth century. Camden (Brit., p. 94) alleges that the Conqueror took the best of these laws and of the Merchenlage (q.v.) and the West Saxonlage (q.v.) and made them, with additions, the laws of his kingdom, but this assertion is open to doubt.

Danelaw. The modern synonym of Danelage.

Dangeria. A payment anciently made by forest-tenants for liberty to plough during the time of pannage (q.v.).

Dangerous Animals. See ANIMALS, LIABILITY FOR.

Dangerous Goods. As to gunpowder and analogous compounds, see EXPLOSIVES; as to petroleum, see that head; as to sending by rail or train goods of a dangerous character (such as vitriol, matches, explosives, etc.) see the Railways Clauses (Consolidation) Act, 1845, s. 105, and the Tramways Act, 1870, s. 53; and as to similar goods on ships, see the Merchant Shipping Act, 1894, ss. 446-450.

Dangerous Machinery. See the Factory and Workshops Act, 1901, ss. 1 (2), 10, 13, 17, 18, as to dangerous machinery generally. As to dangerous machinery in coal mines, see the Coal Mines Act, 1911, ss. 55, 108.

Dangerous Performances. A dangerous performance is not illegal except in the case of young persons. As regards young persons, the law does, however, concern itself, and dangerous performances by them are prohibited by the Dangerous Performances Acts, 1879 and 1897, the combined effect of which is to make illegal the employment of any male under the age of sixteen, or of any female under the age of eighteen, for any public performance or exhibition which, in the opinion of a court of summary jurisdiction, is dangerous to life or limb. See CRUELTY TO CHILDREN.

Dangerous Place. Under the Public Health Acts (Amendment) Act, 1907, the local authority may require the owner of any dangerous place adjoining any street, road, or public footpath in a district to which the Act has been applied to do such things as are necessary to prevent danger to the public, and in his default they may do such things at his expense.

Dangerous Structure. In urban districts the urban authority may require the owner of a building which is in a ruinous state and dangerous to passengers or to neighbouring buildings to make it secure or take it down, and in the event of his default they may do the necessary work at his expense (Towns Improvement Clauses Act, 1847; Public Health Act, 1875, s. 160).

As to dangerous structures in the Metropolis, see the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), ss. 102-117.

Dapifer. Anciently this was a designation of the chief steward or head bailiff of a manor. *Dapifer regis* seems to have been an early title of the Steward of the King's Household.

Dare ad remantiam. An archaic expression meaning, with regard to land, to give for ever, that is to say, in fee.

Darrein is Norman-French for "last." See ASSISE OF DARREIN PRESENTMENT; PUIS DARREIN CONTINUANCE.

Date. See DEED.

Day. According to Coke, days are either natural or artificial. The natural day consists of twenty-four hours, and includes the solar day and the lunar day, which are artificial

days. The solar day is from the rising to the setting of the sun: the lunar day or night is from the setting to the rising of the sun.

In the space of a day all the twenty-four hours are usually reckoned; the law generally rejecting all fractions of a day, in order to avoid disputes. Therefore, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences (Interpretation Act, 1889, s. 36 (2)).

But for certain purposes only part of the twenty-four hours is to be regarded as the day. Thus, as regards burglary (q.v.), the period between 9 p.m. and 6 a.m. is the night as distinguished from the day. In the law of distress the only part of the day during which distress for rent can be levied is the time between sunrise and sunset. See BUSINESS DAY; LAY DAYS; RUNNING DAYS.

Day in Bank. See RETURN DAYS.

Day-rule; Day-writ. This was a permission given to a prisoner confined in the King's Bench or the Fleet Prison to go at large on any day on which he was concerned in a case at hearing in the Courts. It was abolished by the statute 5 & 6 Vict. c. 22, s. 12.

Day to Show Cause. Under the practice of the Chancery Division of the High Court, where an infant is defendant to an action for foreclosure and a judgment is made against him, he has in general a day given him, after attaining twenty-one to show cause against the judgment; for this purpose a subpœna is served upon him on his coming of age requiring him to show cause against the judgment; if he does not do so, he is bound by it. The necessity for this proceeding has been taken away in most cases by statute. Where a sale is directed instead of foreclosure, the infant defendant has no day to show cause. See DEMUR, and *Daniel's Chancery Practice* (8th ed.), pp. 113, 114.

Day-were of Land. Anciently this meant as much land as a ploughman could plough in a single day.

Daysman. An old North of England name for an arbitrator.

Days of Grace are days allowed for making a payment or doing some other act after the time limited for that purpose has expired. Thus, insurance companies commonly allow a certain time for the payment of overdue premiums before forfeiting the policy.

In the law of bills of exchange, days of grace are a period allowed in many countries to the drawee or acceptor of a bill of exchange to pay the bill after the due date, originally as a favour, but now as a matter of right. The number of these days varies in different countries: in England it is three, except that where the last of the three days falls on Sunday, Christmas Day or Good Friday, or a day of public fast or thanksgiving, the bill is payable on the preceding business day; but where the last day of grace is a bank holiday (other than Christmas Day or Good Friday), or where the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is payable on the succeeding business day (Bills of Exchange Act, 1882, s. 14); hence, if a bill falls due on the 11th June, and none of the exceptions apply, the acceptor is not bound to pay it until the 14th. Days of grace are not allowed in the case of bills, notes or drafts payable on demand or at sight.

De. For the various writs the titles of which commence with this word, as, for instance, *de excommunicato capiendo*, see the second word of the title, that is to say, for instance, *excommunicato*.

Deacon. A member of the third order of the Church of England. The other orders are bishops and priests. A deacon cannot hold a benefice or sit in Convocation, but he may perform all the offices of a priest except the consecration of the Holy Communion or the pronouncement of the Absolution. Deacon's orders are a preliminary to priest's orders and must be held for a year unless the bishop otherwise decides. The Clergy Ordination Act, 1804, confirming the canon law, provides that no one, in the absence of a faculty, may be ordained deacon unless he be twenty-three years of age.

Dead Animal. The body of an animal, whether it be a domestic animal or an animal *feræ naturæ* (q.v.), is the property of the person who owned the animal while it was alive, and (Larceny Act, 1916, s. 1 (3)), if of any value, is capable of being stolen.

Animals *feræ naturæ* are the property of the person on whose land they are killed, but in order to constitute larceny thereof the taking must be a separate transaction from the killing. Thus, if a poacher kills game on another man's land he is not guilty of larceny if he takes it away; but if a tramp subsequently finds the game dead on the land and takes it away, then the tramp is guilty of larceny.

Dead Body. See CORPSE; CREMATION.

Dead Freight. The amount payable by a charterer for such part of the carrying capacity of a ship as he has contracted to use but does not in fact use. It is damages for loss of

freight. Apart from contract, a shipowner has no lien for dead freight on goods actually shipped.

"Deadlie Feude." Used in the statute 43 Eliz. c. 13, as meaning the system of reprisals for murder or other injury.

Dead Man's Part. By the custom of the City of London, when a citizen and freeman died intestate, a certain portion of his assets —known as the dead man's part—was anciently expended in getting masses said for the repose of his soul. After the saying of mass had ceased to be legal, the dead man's part seems to have been claimed as a perquisite by the administrator, but the statute 1 Jac. 2, c. 17, enacted that all assets in the hands of the administrator must be distributed in accordance with the Statute of Distribution (22 & 23 Car. 2, c. 10). See CUSTOM OF LONDON.

Dead Man's Place. See PRIVILEGED PLACES.

Dead Pledge (Mortuum Vaduum). A species of mortgage (q.v.).

Dead Rent. See RENT.

Dead Use. Stated to be a synonym of the term contingent or future use.

Deaf and Dumb. A person born deaf and dumb is presumed by the law to be an idiot, but this presumption can be, and generally is, rebutted. A deaf and dumb person can, like any other person, enter into a contract which he understands, and he is a competent witness if he can converse by signs and understands the nature of an oath.

Deaf and dumb children are amongst those whose education is provided for by the Elementary Education (Blind and Deaf Children) Act, 1893 (as amended by the Education (Administrative Provisions) Act, 1907), and the Elementary Education (Defective and Epileptic Children) Act, 1899.

Deafforest. Land comprised within a royal forest was said to be deafforested when it was made to be no longer subject to the forest laws.

Dealer. One who buys in order to sell again. See MARINE STORE DEALER; OLD METALS.

Dean; Dean and Chapter, are the council of a bishop, and also assist in the celebration of divine service in his cathedral. The dean of every diocese is nominated by the Archbishop of Canterbury: the appointment is by letters patent. The dean is the president of the council. The chapter consists of dignitaries of the Church called canons (q.v.). (See ARCHDEACON; BISHOP; CONGÉ D'ÉLIRE.) There are also other kinds of deans: such as rural deans (q.v.); deans of peculiars (of whom the Dean of Arches is one); honorary deans, such as the Dean of the Chapel Royal at St. James's; and deans of provinces or deans of bishops; the Bishop of London is dean of the province of Canterbury.

See CORPORATION.

The dean of the college of a university supervises the conduct of undergraduates, but though he may happen to be in orders, the office is not an ecclesiastical one.

Dean, Forest of. An ancient royal forest (q.v.), comprising about 19,200 acres, in Gloucestershire. For the special Acts, etc., affecting the forest and its mines, see Wood's *Laws of the Dean Forest, London*, (1878).

Dean of Arches is not really a dean in the modern sense of that word. See ARCHES, DEAN OF.

Death. "There is a death in deede [or natural death], and there is a civill death, or death in law, *mors civilis* and *mors naturalis*," says Coke. Civil death formerly took place when a man was banished or adjured the realm by the process of the common law, or when a man became professed in religion, for on such an event happening his property devolved as if he were really dead, and therefore grants of land for life were formerly made for the term of the man's natural life. The doctrine of civil death is now abolished in such cases, and also in the case conviction for treason or felony (see ATTAINDER), though it seems that it might still occur if a person were to be outlawed; but outlawry (q.v.), though still theoretically possible in criminal proceedings, was abolished in civil proceedings by the Civil Procedure Acts Repeal Act, 1879, s. 3. See COMMORIENTES; DONATIO MORTIS CAUSÂ.

In the criminal law the punishment of death is inflicted by hanging the offender by the neck until he is dead, unless, in the case of treason, beheading be substituted by the Crown for hanging. See CAPITAL PUNISHMENT; DEATH WARRANT; MURDER; PIRACY; TREASON.

See ABSENCE FOR SEVEN YEARS.

Death Duties. The death duties mean the duties payable on the devolution of property at death. Those now commonly payable are Estate Duty, Succession Duty, and Legacy Duty: see those titles. Another death duty payable from 1894 to 1914 was Settlement Estate Duty (q.v.). Three other death duties are Temporary Estate Duty (q.v.), now wholly abolished, Probate Duty (q.v.) which is still payable but only to a small extent, and Account Duty (q.v.), which would appear to be still payable in some cases.

Deaths, Registration of. See REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES.

Death Warrant. Up to the enactment of the Central Criminal Court Act, 1837, which was passed a few weeks after Queen Victoria came to the throne, it had been necessary for the sovereign in council to sign with his own hand the warrant for the execution of anyone sentenced to death at the Old Bailey sessions or at the Central Criminal Court (q.v.), which took the place of these sessions in 1834. The Act of 1837 assimilated the practice of the Central Criminal Court to that of other courts of criminal jurisdiction, by providing that sentences of death passed at the Central Criminal Court should be carried out without the personal intervention of the sovereign.

De bene esse. To do a thing *de bene esse* is to do it provisionally or in anticipation of the occasion when it may be needed. Thus, in certain cases, the Chancery Division of the High Court will allow evidence to be taken out of the regular course, in order to prevent the evidence being lost by the death or the absence of the witness. This is called taking evidence *de bene esse*, and is looked upon as a temporary and conditional examination, to be used only in case the witness cannot afterwards be examined in the suit in the regular way. See COMMISSION; PERPETUATION OF TESTIMONY.

Debenture is an instrument usually but not necessarily under seal, issued (except in the not very usual case of issue by an individual or a club) by a company or public body as security for a loan of money. It contains either expressly or impliedly a promise to pay the amount mentioned in it, and almost invariably creates a charge on the whole or part of the property of the company or public body. A debenture generally forms part of a series or issue of similar instruments, with a provision that they shall all rank *pari passu* in proportion to their amounts.

Debentures are of two classes; debentures so called by the statutes under which they are issued, and debentures popularly so called.

Debentures so called by the statutes under which they are issued are:

I. Mortgage debentures issued under the Mortgage Debenture Acts, 1865 and 1870. The object of these Acts is to enable a company formed for the purpose of lending or borrowing money on real securities to raise money by issuing debentures charged on the securities for the time being in its possession, whether they belong to the company itself or to persons who have borrowed money of it. Provision is made for the registration in the Land Registry of the securities on which the debentures are to be charged, and for ascertaining their value; also for registering the debentures themselves, and for enabling a person who has borrowed money of the company to redeem his security notwithstanding that the company has made use of it by issuing debentures charged on it.

II. Debentures issued by a local authority (*e.g.*, an urban sanitary authority) pursuant to the Local Loans Act, 1875. The provisions of this Act are made applicable to a local authority either by a special Act of Parliament incorporating its provisions, or by sanction of the Ministry of Health. The security generally consists of a local rate, with or without other property. The amount of the debenture may be made payable either to the bearer or to a person named therein, his executors, administrators or assigns; the latter kind is called a nominal debenture.

III. There are also numerous private or special Acts of Parliament authorising the issue of debentures by the companies or public bodies to which they relate. The nature and incidents of such debentures of course depend on the statutory provisions in each case.

Debentures, popularly so called, are of the following varieties:

(1) Mortgages issued by railway and other companies (incorporated by special Act) under the Companies Clauses Acts, 1845 to 1889. Such debentures contain an assignment of the undertaking and receipts of the company, and not merely a charge on them. Debentures issued by railway companies are also subject to the Railway Companies Securities Act, 1866, and the Railway Companies Act, 1867. See DEBENTURE STOCK.

(2) Mortgages issued by commissioners and similar bodies under the Commissioners Clauses Act, 1847. The provisions of this Act are similar to those of the Companies Clauses Consolidation Act, 1845, which is the first of the group entitled the Companies Clauses Acts, 1845 to 1889.

(3) Debentures of a company registered under the Companies Acts, 1862 to 1907, and the Companies Acts, 1908 to 1917, issued pursuant to express powers contained in the articles of association. Such debentures vary in form and effect according to the provisions of the articles and the skill of the draftsman, but they generally purport to create a charge on the whole or part of the property of the company (see SECURITY); sometimes, however, so-

called debentures are merely bonds or in the form of promissory notes.

The payment of interest on debentures issued under statutory powers (*i.e.*, debentures belonging to all the above classes except that last mentioned) may be enforced by the judicial appointment of a receiver to collect the income of the property and apply it in payment of the interest. (See RECEIVER.) In many debentures issued under the Companies Acts, the holders are given express power to themselves appoint a receiver.

Debentures issued by any company under the Companies Acts are void as against the liquidator and any creditor of the company unless they are registered pursuant to the Companies (Consolidation) Act, 1908, s. 93.

Debentures issued under the Companies Clauses Acts must be registered with the secretary of the issuing company (Companies Clauses Consolidation Act, 1845, s. 45).

Debentures issued by foreign or colonial governments cannot be enforced by legal proceedings in this country.

The question whether a debenture is a negotiable instrument is sometimes one of difficulty. It seems clear that debentures issued under the Mortgage Debenture Acts, 1865 and 1870, the Companies Clauses Acts, 1845 to 1889, the Commissioners Clauses Act, 1847, or the Local Loans Act, 1875, are merely statutory mortgages, assignable in a particular form, and not negotiable. A debenture to bearer issued under the Local Loans Act, 1875, appears indeed to be negotiable so far as the issuing authority is concerned: that is, the authority would be bound to pay the bearer without reference to his title: but it does not appear whether a person wrongfully in possession of such a debenture could give a good title to a *bonâ fide* purchaser as against the true owner. The question whether a debenture issued under the Companies Acts is or can be negotiable in the latter sense (*i.e.*, as between the successive holders of it) must apparently be answered in the negative: whether the holder of a particular debenture belonging to that class can claim the amount from the company, irrespectively of any question between the company and a prior holder, depends on the form of the instrument and (in some cases) on the circumstances attending its issue. Debentures of foreign governments may by usage of trade be negotiable instruments in the full sense of the term.

The Statutory Companies (Redeemable Stock) Act, 1915, enables statutory companies, that is to say, railway, canal, dock or water companies or other companies incorporated by special Act, to issue redeemable debentures or redeemable debenture stock.

The word "debenture" is derived from *debentur*, "they [moneys] are due," the word with which certain obsolete bonds given by the Exchequer began, and the term "debenture" is still applied to the certificate, issued by the Customs authorities, which entitles an exporter of goods to a bounty or drawback.

"Debenture" was also used to mean an acknowledgment of indebtedness given by the State or some public officer. See Ordinance 63 of 1649 for the form of debenture issued by the Commonwealth. In the Exchequer the auditor gave "debentures" (which seem to have been in the nature of receipts) to the tellers for moneys paid by them to him. The servants of the royal household used to receive "debentures" (which seem to have been in the nature of orders) for the amount of wages due to them.

Debenture Stock is a stock or fund representing money borrowed by a company or public body, and charged on the whole or part of its property. Lord Lindley defined it as "borrowed capital consolidated into one mass for the sake of convenience." It is almost invariably secured by a trust deed and the rights of the stockholders are primarily against, not the company, but the trustees of the deed. It differs from debentures chiefly in these respects: the title of each original holder appears in a register, instead of being represented by an instrument complete in itself: and the stock is capable of being transferred in any amounts, unless the regulations of the company, etc., forbid the transfer of amounts or fractions less than £10 or the like. Provision is sometimes made for issuing to each holder a certificate representing the amount of his stock, transferable by delivery, so as to entitle the bearer for the time being to the stock in question: such certificates generally have coupons for interest attached to them, and while they are outstanding the stock ceases to be transferable on the register. Perpetual debenture stock is stock which cannot be paid off.

The principal statutes relating to debenture stock are the Companies Clauses Acts, 1845 to 1889, the Commissioners Clauses Act, 1847, and the Local Loans Act, 1875 (see DEBENTURE), the Companies Clauses Act, 1863, and the Companies (Consolidation) Act, 1908.

Down to forty years ago the issue of debenture stock by companies incorporated under the Companies Act, 1862, was not common,

but now the issue of such stock is, in the case of companies incorporated under that Act or under the Act of 1908, a usual means of raising money.

Debet et detinet. (He owes and he detains.) These words were formerly used in the writ and declaration in the now abolished action for debt. That action applied not only to debts but also to goods improperly detained. Where the action was for the recovery of money, both of the words were used: when it was for the recovery of goods only, detinet was used.

Debet et solet. (He owes and he is accustomed.) These words were anciently used in writs and declarations in actions to enforce a right which had been enjoyed by the plaintiff and his ancestors, such as the action (originated by the writ *Secta ad molendinum*), which was brought by the plaintiff to enforce his inherited right to have corn ground at his mill. Where the right in question had been enjoyed by the ancestor, but not by the plaintiff, only the word *debet* was used.

Debile fundamentum fallit opus (*Noy, Max.* 12; *Finch, Law* I. 14). (A weak foundation destroys the superstructure.) Thus, when there was defeated an estate to which a warranty was annexed, the warranty also was defeated.

Debita sequuntur personam debitoris (*Halk. Max.* 13). (Debts follow the person of the debtor.)

Debitor non præsumitur donare (*Jur. Civ*). (A debtor is not presumed to give.) This maxim has reference to the rule under which a debtor leaving to his creditor a legacy equal to or exceeding the debt, will be presumed, in the absence of evidence to the contrary, to have left the legacy in satisfaction of the debt and not as a spontaneous and independent gift. See SATISFACTION.

Debitorum pactionibus creditorum petitio nec tolli nec minui potest (1 *Pothier*, 108). (The rights of creditors can neither be taken away nor diminished by agreements among the debtors.) This is a principle of our law also.

Debitum et contractus sunt nullius loci. (Debt and contract are of no place.) This relates to the old rule under which in actions of debt or contract (known as transitory matters) the venue might be laid anywhere, although in local actions (such as trespass to the realty) it had to be laid where the cause of action arose.

De bonis asportatis. See TRESPASS.

De bonis non. The abbreviated form of *de bonis non administratis* (relating to assets which have not been administered). See ADMINISTRATOR.

De bonis propriis. Of a person's own goods.

De bonis testatoris. Of a testator's goods.

Debt. In the strict sense of the word, a debt exists when a certain sum of money is owing from one person (the debtor) to another (the creditor). Hence "debt" is properly opposed (1) to unliquidated damages (see DAMAGES); (2) to "liability," when used in the sense of an inchoate or contingent debt; and (3) to certain obligations not enforceable by ordinary process (see OBLIGATION). "Debt" denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment.

Debts are of various kinds, according to their origin. See CONTRACT.

Debts may be created under the provisions of various statutes, as in the case of penalties imposed by penal statutes, and payable to an informer or to the party grieved; debts in respect of calls under the Companies Acts; debts for tolls payable under statutes, and the like. By the provisions of the Acts creating them, some of these debts have the same effect as debts created by specialty (*infra*).

A debt of record is a debt proved to exist by the official records of a Court of record. (See COURT.) Amongst such debts are recognisances and statutes (q.v.), but the most important are judgment debts, or debts created by the judgments, decrees, etc., of Courts of record. (See JUDGMENT.) Thus if A injures B, his liability to recompense B does not constitute a debt, but if B brings an action and recovers judgment against him for £500, this constitutes a judgment debt, and may therefore be proved for in the event of A becoming bankrupt. Judgment debts have certain privileges, which, however, have been much curtailed by recent legislation, though some still remain. Thus, on the death of a person, his judgment debts must be paid in full by his executors out of his personal estate before any of his debts due on contract. (See ASSETS.) The judgment creditor also has various rights of enforcing his judgment by execution and attachment (q.v. and DEBTORS ACT).

Debts created by contract are of two kinds, specialty and simple contract debts. Specialty debts are those created by deed or instrument under seal, *e.g.*, a bond or covenant (q.v.). Formerly there was an important distinction between debts of specialty in which the heirs

were bound (that is, where the person entering into the instrument expressly bound his heirs as well as himself), and those in which they were not, as debts of the former class had in some cases priority in payment out of the real estate of the debtor after his death over ordinary specialty debts, and all specialty debts had priority in payment out of the personal estate over simple contract debts; thus if a man owed £500 on bond and £500 on a bill of exchange, his personal estate being worth £700, the bond would have been paid in full, leaving only £200 to pay the other debt; but these distinctions no longer exist in the case of persons dying on or after the 1st January, 1870. (See ASSETS.) Specialty debts, however, have still this advantage over simple contract debts, that they may be enforced by action within twenty years, while actions on simple contracts can only be brought within six years from the right of action accruing.

Simple contract debts are all debts not secured by record or deed, *e.g.*, the liability on a bill of exchange.

Debts due on specialty or simple contract are sometimes said to arise from privity of contract, as opposed to those created by privity of estate. Thus if A devises land to B charged with an annuity in favour of C, C's right to the annuity as against B arises from privity of estate. See PRIVITY.

With reference to the privileges which they confer on the creditor, debts are of the following kinds:—

Crown debts, or those due to the Crown, have been invested with special privileges by various Acts of Parliament, some of which apply exclusively to debts due from accountants to the Crown, that is, persons employed to collect and account for money due to the Crown, hence called "accountants' debts." Examples of these privileges are: that they bind the debtor's land if duly registered (see ACCOUNTANT TO THE CROWN); that on the death of the debtor his Crown debts are payable in priority to other debts; and that if he becomes bankrupt and obtains his discharge he nevertheless remains liable for his Crown debts (Bankruptcy Act, 1914, s. 28 (1) (*a*)).

Secured debts are those for which the creditor has some security in addition to the mere liability of the debtor. The term is somewhat vaguely used. Examples of secured debts in the strict sense are debts secured by mortgage, charge or lien, or by the collateral liability of some other person (see GUARANTIE); but we also speak of a debt being secured by a judgment, warrant of attorney, or by the bond, promissory note, etc., of the debtor, because the enforcement of the debt is thereby facilitated or made more certain. See SECURITY.

Debts may also be absolute or conditional, payable at once or *in futuro*, etc.

In the law of bankruptcy, "debt" is used in various meanings.

A debt sufficient to maintain a petition for adjudication, in other words, a debt which enables the creditor to have the debtor adjudicated bankrupt, is called a good petitioning creditor's debt. Such a debt must be one "which may be the immediate subject of an action," and must not be less than £50, nor secured, unless the creditor is willing to give up the security or give credit for it. See BANKRUPTCY NOTICE.

The term "debt provable in bankruptcy" excludes demands in the nature of unliquidated damages arising otherwise than by reason of a breach of trust or of a contract or promise (*e.g.* rights of action founded on tort), and also debts contracted with notice of an act of bankruptcy; but with this exception, "debt provable in bankruptcy" means any debt or liability, present or future, certain or contingent, existing at the date of the receiving order, including liabilities to arise on events not likely to occur or not capable of occurring before the discharge of the debtor, and liabilities capable of being valued or assessed by fixed rules, by a jury, or as matter of opinion (Bankruptcy Act, 1914, s. 30).

Debts provable in bankruptcy are called preferential debts when they are payable in full before any other debts; they consist of taxes and rates for one year, and, subject to limitation, national insurance contributions, workmen's compensation, and wages or salaries due to clerks, servants, labourers or workmen (Bankruptcy Act, 1914, s. 33).

"Debt" sometimes denotes an aggregate of debts: thus, the "bonded or mortgage debt" of a turnpike trust, meant all the debts of the trust secured by bond or mortgage.

See CHOSES IN ACTION; CREDIT; ACTION; CONTRACT; DUE.

Debt, Action of. As will be seen from ACTIONS, this was one of the original forms of action, now all abolished. See also DEBET ET DETINET.

Debt and Danger, Affidavit of. An affidavit which must be filed in order to obtain an immediate extent (see EXTENT) against a debtor to the Crown. It must set out the amount of the debt, how it arose, that it is

in danger of being lost, and why it is in danger of being lost.

Debtee is a person to whom a debt is owing; *i.e.* a creditor. The term is not common.

Debtor is a person who owes a debt. For the purposes of the Bankruptcy Act, 1914, the term "debtor" includes any person who at the time of the act of bankruptcy was (*a*) personally in, or (*b*) ordinarily resided or had a place of business in, or (*c*) was carrying on business either personally or by an agent or manager in, or (*d*) was a member of a firm or business carrying on business in, England (s. 1 (2)); and it includes a firm of debtors in partnership and any debtor proceeded against under the Act, whether adjudicated or not (Bankruptcy Rules, 1915, Pt. I., r. 3).

Debtors Act, 1869. The provisions of this Act may be treated of under four heads.

1. It abolished imprisonment for debt, except in certain cases, the most important of which are those of a debtor to the Crown, of a defaulting trustee, and of a judgment debtor who is able but refuses to pay (ss. 4, 5). See also the Debtors Act, 1878. See ATTACHMENT; COMMITTAL.

2. It abolished arrest upon mesne process (see ARREST), but provides that when in any action in one of the superior Courts in which, if brought before the Act, the defendant would have been liable to arrest, the plaintiff proves at any time before final judgment that he has a good cause of action for £50 or upwards, that there is probable cause for believing that the defendant is about to leave England, and that his absence will materially prejudice the plaintiff in the prosecution of his action (*i.e.* that the presence of the defendant is absolutely required for purposes of evidence), the judge may order the defendant to be imprisoned until he gives security that he will not go out of England without the leave of the Court. When the action is for a penalty (q.v.), proof that the defendant's absence will be prejudicial is not required, and the security is to the effect that any sum recovered against the defendant shall be paid or that he shall be rendered to prison (s. 6). See SECURITY.

3. It makes it a misdemeanour for any person to (1) obtain credit by false pretences or other fraud; (2) transfer his property with intent to defraud his creditors, or (3) with like intent, conceal or transfer his property after or within two months before any unsatisfied order or judgment against him (s. 13). Other sections dealing with fraudulent debtors have been repealed, and are replaced by sections of the Bankru[illegible], 1914. See FRAUDULENT DEBTOR.

4. It regulates the manner of executing and enforcing warrants of attorney, cognovits and orders for judgment (ss. 24-28).

Debtor Summons. Under s. 7 (now repealed) of the Bankruptcy Act, 1869, this was the equivalent of the bankruptcy notice (q.v.) now in use.

Deceased Wife's Sister or Deceased Brother's Widow, Marriage with. The Deceased Wife's Sister Marriage Act, 1907, enacts that no marriage with the sister or the half-sister of a deceased wife, whether contracted before or after 28th August, 1907, shall be deemed void or voidable as a civil contract, unless any such marriage was annulled before that day or unless either party to any such marriage did before that date and during the life of the other party lawfully marry another person, in either of which cases any such marriage is to be deemed to have become void on the day on which it was annulled or on which either party so lawfully married another person.

The Deceased Brothers' Widows Marriage Act of 1921 enacts that the Act of 1907, with the substitution of the "28th July, 1921," for the "28th August, 1907," and with such verbal amendments as are required in order to make it apply to the case of marriage with the widow of a deceased brother or half-brother, shall, as regards any such marriage, have effect as if passed on 28th July, 1921; and it gives the two Acts collectively the short title of the Marriage (Prohibited Degrees of Relationship) Acts, 1907 and 1921. The Act of 1921 is retrospective in its operation, in precisely the same way as that of 1907.

Deceit. An action upon the case (q.v.) for a deceit was an action which lay to recover damages caused by the fraud or false affirmance by the defendant of a thing within his knowledge. This tort is now more commonly called fraud or misrepresentation (q.v.).

The writ of deceit to reverse a judgment in a real action obtained by fraud or collusion was abolished by the Real Property Limitation Act, 1833, s. 36.

Decem Tales. See TALES.

Decennarii; Deciners; Decinniers; Doziners. The inhabitants of a decennary (q.v.).

Decennary. A tithing (q.v.).

Decies tantum. (Ten times as much.) Under the statute 38 Edw. 3, c. 12, any juror who took money of either party to a case for giving his verdict was liable to a penalty of ten times the amount so taken; and any

person might sue for this penalty, half of which went to the person who sued, and the other half to the Crown. The penalty was sued for on the writ *Decies tantum*. The statute 38 Edw. 3, c. 12, was repealed by the County Jurors Act, 1825, s. 62; but the writ had been then long obsolete.

Decimæ. Tithes (q.v.).

Declaration is a formal statement intended to create, preserve, assert or testify to a right. The following are the principal kinds of declarations:—

A declaration of use or trust is a statement or admission (which in the case of land or chattels real must, under the Statute of Frauds, be written) that property is to be held to the use of or upon trust for a certain person. Thus under the Statute of Uses land may be conveyed to A. to such uses as B. shall declare, and a declaration of the uses by B. takes effect accordingly by vesting the land in the person or persons in whose favour it is made. Deeds to declare uses were commonly employed before the abolition of fines and recoveries, which being only adapted to convey the absolute estate, could not be made to answer the purposes of family settlements where a variety of substitutional limitations are required, and therefore the land was conveyed by fine or recovery to a given person, and the uses afterwards declared by a separate deed. Appointments of uses under powers are identical in effect with declarations of uses, but, strictly speaking, the latter term is only applied in the case of uses created by a fine or recovery.

A declaration of trust is the ordinary mode of creating a trust when the trust property is already vested in the intended trustee. Thus if A. being owner of property wishes to create a trust in it for the benefit of B. without conveying it to another person, he executes a deed whereby he declares that he holds the property in trust for B.

A declaration of inability to pay debts is a declaration by a person admitting his inability to pay his debts; such a declaration when signed and filed with the required formalities constitutes an act of bankruptcy (Bankruptcy Act, 1914, s. 1 (1) (*f*)) on which a receiving order may be made against the debtor (*ib.* s. 3). Under the ancient law it was called a declaration of insolvency.

The presentation by a person of a bankruptcy petition against himself is also a way in which a declaration of inability to pay is made and has the same effect as a declaration (s. 1 (1) (*f*)). See RECEIVING ORDER.

In the law of evidence, declaration is commonly used to denote a statement made (not on oath) by a deceased person and admissible in evidence contrary to the general rule against derivative evidence. Thus in a case of murder, the dying declaration of the murdered person is admissible on the trial of anyone for the murder or manslaughter of the deceased, if it be shown that the deceased was in danger of death and had given up all hope of recovery; and so in a civil case is a declaration made by a deceased person against his proprietary or pecuniary interest, or on a question of pedigree, or in the course of business or professional duty, or as to public or general rights. A statutory declaration is a written statement of facts which the person making it (the declarant) signs and solemnly declares to be true before a commissioner or magisterial officer. Making a false statutory declaration is a misdemeanour (Perjury Act, 1911, ss. 5, 15). See AFFIDAVIT; AFFIRMATION; OATH. Statutory declarations were introduced to prevent the frequent use of oaths in extrajudicial proceedings, and oaths are accordingly forbidden in these cases. Thus the execution of a deed, if required to be proved extrajudicially, is properly proved by a statutory declaration. But as the Act does not apply to the colonies, proof of the execution in England of a deed for use in one of the colonies is properly made by an extrajudicial affidavit. Making a false statutory declaration is punishable as false swearing (q.v.).

In a judgment or order on the Chancery side the declaration or declaratory part is that part which gives the decision or opinion of the Court on the question of law in the case; thus in an action raising a question as to the construction of a will, the judgment or order declares that according to the true construction of the will the plaintiff has become entitled to the residue of the testator's estate, or the like; and under R. S. C., Ord. 25, r. 5, a judgment or order may consist of a binding declaration of right only. Under Ord. 54A, any Division of the High Court may, on an originating summons (q.v.), make a declaration as to the rights of the parties interested in a deed, will, or other written instrument, or as to the construction thereof. See DECLARATION OF TITLE ACT.

In the common law and probate practice before the Judicature Acts, a declaration was the first pleading delivered by the plaintiff, corresponding to the statement of claim (q.v.) under the present practice. It was divided

into counts (q.v.) and was framed in technical language. See PLEADING; VENUE.

See FALSE DECLARATION.

Declaration of Right. See DECLARATION. A declaration of right may be obtained against the Crown.

Declaration of Title Act, 1862. This Act provides that any person entitled to land in possession for an estate in fee-simple, whether absolutely or subject to incumbrances, etc., may apply to the High Court of Justice, by petition in the Chancery Division, for a declaration that he has a good title to the land, and the Court, after causing the title to be investigated, may make a declaration *nisi*, and cause notice thereof to be given to all persons interested. If no one shows cause against the declaration within a certain time, the Court may make a declaration that the petitioner has the title which he claims.

The Act has not been put in force to any extent. The last application under it was made so far back as 1873.

Declaratory. A declaratory statute is one which declares or formally states what the existing law is on a given subject, so as to remove any doubts which may have been raised.

A declaratory decree or judgment is one which simply declares the rights of the parties, or expresses the opinion of the Court on a question of law, without ordering anything to be done. See DECLARATION.

As to declaratory evidence, see DECLARATION; EVIDENCE.

Declare. See LEAD.

Declinatory Plea. This was the means by which anciently a person arraigned for an offence in respect of which he was entitled to benefit of clergy (q.v.) could "claim his clergy."

Decoy. A contrivance for catching wild duck, etc. The birds are induced by a tame duck to swim into certain covered enclosures from which escape is impossible. Until they are debarred from escape the owner of the land on which the decoy is placed has no property in them. For nearly a hundred years it was settled law that disturbance of a decoy was actionable; but since 1898 the law would appear to be no longer so.

Decree is an order of a Court pronounced on the hearing of a suit. The term is included in the term "judgment" (Judicature Act, 1873, s. 100), and as a matter of fact it is used in the High Court only in matrimonial suits.

In matrimonial suits in the Probate, Divorce, and Admiralty Division of the High Court, every decree for dissolution or nullity of marriage is in the first instance a decree *nisi*, that is, provisional, and cannot be made absolute until after the expiration of a certain time (generally six months), during which period any person is at liberty to show cause to the Court why the decree should not be made absolute, by reason of its having been obtained by collusion, or because of material facts not brought before the Court; and, on cause being so shown, the Court deals with the case by making the decree absolute, or by reversing it, or by requiring further inquiry.

In the Court of Arches (q.v.), a suit is commenced by a process called a decree, which is the same thing as a citation (q.v.). (See VIIS ET MODIS.) A final interlocutory decree is the same thing as a definitive sentence (q.v.), except that it is under the hand of the registrar, and not of the judge.

Under the practice in Chancery before the Judicature Acts, the decree was an order pronounced on the hearing of a suit, and was either final or interlocutory, in which latter case the "further consideration" (q.v.) was reserved. The decree usually contained a declaration (q.v.), followed by the ordering or mandatory part. Under the present practice, what was formerly called the decree is now usually represented by the judgment (q.v.); in administration actions and actions for accounts, etc., it sometimes takes the form of an order. See MOTION FOR DECREE; HEARING; FURTHER CONSIDERATION; ENROLMENT.

Decree nisi. See DECREE.

Decretal. In the Chancery practice, before the Judicature Acts, a decretal order was an order made on motion or otherwise not at the hearing of the cause (that is, not on motion for decree), but having the effect of a decree.

Decretals. See CANON LAW.

Dedbana. Homicide (Leg. Hen. 1, c. 85).

Dedi. (I have given.) In the ancient system of conveyancing the use of this word in a deed or conveyance was a warranty in law; see *Co. Litt.* 304. Compare CONCESSI.

Dedication. This is where a person expressly or tacitly throws open for public use a road on his land, and the public assent to or avail themselves of the dedication. For instance, if a man build a double row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is instantly a highway. A dedication will be implied from an uninterrupted use by the public of the right of way claimed, even for a few years.

A dedication may be limited in point of time, so that the highway is usable by the public at certain times only; or may be qualified so as to make the use of the highway subject to a right of user by the owner of the soil for other purposes, or subject to an existing obstruction or excavation which, if made after the dedication, would have been a nuisance. See HIGHWAY; WAY.

Dedimus potestatem was a writ formerly sued out of Chancery, empowering the persons to whom it was directed to administer the oath of allegiance and a judicial oath to a person who had been newly appointed a justice of the peace. The writ was also formerly used to appoint special commissioners in the country to take a conusance of a fine, or to swear an answer to a bill in equity. And in still earlier times it was required when a person wished to appoint an attorney to represent him in Court (*dedimus potestatem de attornato faciendo*), because the law required the parties to appear in Court personally.

De Donis. See ESTATE TAIL.

Deed. "A deed is a writing or instrument written on paper or parchment, sealed and delivered, to prove and testify the agreement [*i.e.*, the intention] of the parties whose deed it is, to the things contained in the deed" wrote Sheppard in 1641; and a deed is still the same. A deed cannot be written on wood, leather, cloth, stone, or any other material than paper or parchment. A deed differs from other instruments not merely in its formalities (as to which, see SEAL; DELIVERY; EXECUTION; REGISTRATION; STAMP), but also in its effects (as to which, see BOND; CONTRACT; COVENANT; ESTOPPEL; LIMITATION; MERGER).

All deeds are either poll or indented. A deed poll is a deed made by one person or by several persons in the same interest, as where several persons appoint an attorney by deed, or bind themselves by a bond. A deed poll is so called because the paper or parchment is polled or cut even, as opposed to a deed indented. In the old writers "deed" is generally used in the sense of deed poll.

As to deeds indented, see INDENTURE. As to deeds acknowledged, see ACKNOWLEDGMENT. As to deeds enrolled, see ENROLMENT; DISENTAILING DEED; BARGAIN AND SALE.

A deed generally consists of the following parts, or some of them,—the premises, the habendum, the tenendum, the reddendum, the conditions, and the covenants. See the various titles

Deeds are essential to the validity of certain legal acts, especially for almost all conveyances and leases of real property, and for the alienation of chattels where there is no contract of sale or delivery of possession. (See BILL OF SALE.) Bonds, powers of attorney, and a few other instruments, are in practice always made by deed. See Escrow.

"Deed" is also used in the expression "in deed" to signify that a thing has been really or expressly done, as opposed to "in law," which means that it is merely implied or presumed to have been done (see CONDITION); therefore, when we say that a surrender in deed of an estate in land must be made by deed, the word "deed" is used in different senses.

"Deed" seems anciently to have signified a writing under seal not concerning land, as opposed to a charter. It is obviously derived from *do*, in the sense of execute, possibly in imitation of the Norman French *fet, fait.*

Deed of Covenant. A deed in which one party merely covenants with another to do certain things. In most deeds covenants are merely incidental to other things in the deed; but formerly it was not unusual to covenant by a separate deed of covenant to produce, when called on, the title deeds of a property assured by another deed; and deeds of covenant are sometimes still used. Thus such a deed may be used instead of a bond to secure the payment of money.

Deed of Grant. A deed whereby property is granted. Incorporeal hereditaments always lay in grant, that is to say, they were transferred by a deed whereby the vendor granted them to the purchaser. Since the enactment of the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 2, corporeal hereditaments have been transferable in like manner; but until then they lay in livery and not in grant, and were usually transferred by lease and release (q.v.). The Conveyancing and Law of Property Act, 1881, s. 49, provides that the use of the word "grant" is not now necessary to convey hereditaments of either kind. The word is in fact always used; but any other word which expresses the same meaning—"give" for instance—would be quite as effectual.

Deed of Settlement. A joint-stock company formed before November 1st, 1844, was usually formed by a deed of settlement, constituting certain persons trustees of the partnership property, and containing regulations for the management of its affairs. It was sometimes accompanied by a private Act of Parliament or by letters patent. (See COM-

PANY.) Companies registered after 1st November, 1844, under the statute 7 & 8 Vict. c. 110, and before 1862, were regulated by deeds of settlement, in the same way as companies formed under the Companies Act, 1862, and under the Companies (Consolidation) Act, 1908, are regulated by a memorandum and articles of association (q.v.).

Deed Poll. See DEED.

Deer. See ANIMALS FERÆ NATURÆ.

Deer-hayes. These were nets into which deer were driven and captured. They were also known as buck-stalls. Their use by any person not having a "park, chase, or forest" of his own was prohibited by the statute 19 Hen. 7, c. 11.

Deer-leap. In the statute 31 Hen. 8, c. 5, which established and regulated the chase or park of Hampton Court, it was provided that the tenants of the manor of Hampton Court should be at liberty to fence off the lands on which they had the right to grow corn, but that the officers of the park might make "deer-leaps" in the fences after each crop of corn had been gathered, in order to give the deer access to the stubble fields.

De facto. (In fact.) The statute 11 Hen. 7, c. 1, enacts that no person serving the king for the time being in his wars shall be convicted or attaint of high treason for so doing. The intention was to protect persons serving the king *de facto* against punishment or forfeitures imposed by the king *de jure* on the latter recovering the kingdom.

Defaltum. Default.

Defamation is the act of maliciously making a false and disparaging statement concerning a person; by "disparaging" is meant that the statement is calculated to expose him to contempt, ridicule or public hatred, or to injure his character or credit, or to cause him to be feared or avoided, or the like. Defamation is either libel or slander (q.v.). See also MALICE; PRIVILEGE.

Default, said Coke, "is legally taken for non-appearance in Court;" but at the present day it means the failure to take any step required by the rules of procedure. Thus, if a party fails to appear or to deliver a pleading within the proper time, he is in default, and a judgment given against him in consequence is called judgment by default. Such a judgment may, in a proper case, be set aside by the Court on proper terms (Ord. 13, r. 10; Ord. 27, r. 15; Ord. 36, r. 33). See INQUIRY, WRIT OF; NIHIL DICIT.

Default Summons. In the County Court a default summons or a special default summons, like a specially endorsed writ in the High Court, is a summary means of recovering a debt or liquidated demand. Procedure is governed as from 1st April, 1920, by the County Courts Act, 1919, s. 8, and rr. 7-30 of the County Court Rules, 1920, dated 19th March, 1920.

An ordinary summons may be issued in every case; and only an ordinary summons can be issued where the claim does not exceed, in the case of any defendant, £2, or in the majority of cases against anyone of the labouring class, £5 (r. 7). If the claim exceeds £2 but does not exceed £10, and a summons other than an ordinary summons is permissible, only a default summons can be issued instead of an ordinary summons; but if the claim exceeds £10, then the plaintiff, if he does not issue an ordinary summons, must proceed by special default summons (*ib.*). Summary judgment may be entered up unless the defendant, within eight days from service, delivers to the registrar (*a*) in the case of a default summons, a notice of defence; or (*b*) in the case of a special default summons, an affidavit of defence; or (*c*) in either case an admission of the debt with an offer of payment; but if the defendant does either (*a*), (*b*), or (*c*), the case is to be set down for hearing (r. 8).

For further information, reference should be made to rules 9-30.

Defeasance, "in a large sense, doth sometimes signify (i.) a condition annexed to an estate; and sometimes (ii.) the condition of an obligation, made with and annexed to the obligation at the time of making thereof," says Sheppard, in his *Touchstone*, but it is more properly applied (iii.) to a condition relating to a deed, such as an obligation, recognizance, statute, or the like, but contained in a separate instrument, whether entered into at the same time as the deed itself, or afterwards; on the condition or defeasance being performed by the obligor or recognisor, the deed is made void. A conveyance of the freehold of land at common law (*e.g.*, by feoffment) could not be defeated by a defeasance unless it was executed at the same time as the conveyance. And in this manner mortgages were in former times usually made, the mortgagor enfeoffing the mortgagee, and he at the same time executing a deed of defeasance, whereby the feoffment was rendered void on repayment of the borrowed money at a certain day.

Almost the only instances of defeasances at

the present day occur in the case of cognovits and warrants of attorney (q.v.).

" Defeasance " is also used to describe the effect of a conditional limitation in defeating or putting an end to an estate. See LIMITATION.

Defeasance is derived, according to Britton, from the Norman French *defere*, to undo.

Defeasible. An estate or interest in property is said to be defeasible when it is subject to be defeated by the operation of a condition subsequent or conditional limitation. Thus the estate of a mortgagee is defeasible, because the mortgagor has the right to redeem, and an estate followed by a conditional limitation is defeasible on the performance of the condition; for examples of conditions, see that title and also LIMITATION. The term may also be applied to interests given by will subject to being divested (see DIVEST), and to an estate or interest subject to a power of revocation. See POWER.

Defeat. See DEFEASANCE.

Defence. The right of private or self-defence is the right which every person has to inflict death or bodily harm in order to defend himself or any other person from unlawful violence, provided that he inflicts no greater injury than he in good faith and on reasonable grounds believes at the time to be necessary.

In pleading, a defence is a reason given by the defendant, respondent, prisoner or other person against whom a proceeding is brought, tending to show that there is no case against him.

In ordinary actions in the High Court, defences are both of law and of fact, and are put forward either by statement of defence or by proceedings in lieu of demurrer (q.v.). Some of the old defences at common law had short names, which are still preserved, *e.g.*, " not guilty " (which forms part of the plea of not guilty by statute (Ord. 19, r. 12)), etc. As to defence generally, see R. S. C., Ord. 21. See also AMENDS; CONFESSION AND AVOIDANCE; PLEADING; TRAVERSE.

See also COUNTERCLAIM; CONFESSION.

In matrimonial suits, defences are divided into absolute, that is, such as being established to the satisfaction of the Court are a complete answer to the petition, so that the Court can exercise no discretion, but is bound to dismiss the petition; and discretionary, or such as being established leave to the Court a discretion whether it will pronounce a decree or dismiss the petition. Thus in a suit for dissolution, condonation is an absolute, adultery by the petitioner a discretionary, defence. See the Matrimonial Causes Act, 1857, ss. 29, 30, 31.

In County Court practice, defences of set-off, counterclaim, infancy, coverture, statute of limitations, discharge under the Bankruptcy Acts, and tender, or a statutory or equitable defence, or a defence of fraud or misrepresentation, are called special defences, and a defendant cannot set up one of them unless he gives the registrar notice of his intention to do so (County Courts Act, 1888, s. 82; County Court Rules, Ord. 10, r. 10).

Such notice is in addition to, and not in substitution for, the notice of defence or the affidavit of defence required in the case of a default summons (q.v.).

Now under s. 24 (2) of the County Courts Act, 1919, and Ord. 10, rr. 9A, 9B, 10A, every defendant, where the action is for £20, must file a statement of the nature of his defence within four days of receipt of notice from the plaintiff requiring him so to do.

As to defences in criminal procedure, see ARREST OF JUDGMENT; PLEA.

Defence Acts, 1842 to 1873, are the Acts 5 & 6 Vict. c. 94; 17 & 18 Vict. c. 67; 22 Vict. c. 12; 23 & 24 Vict. c. 112; 28 & 29 Vict. c. 65; and 36 & 37 Vict. c. 72, under which certain lands are vested in the Secretary of State for War to be used for military purposes, and power is given to acquire other lands for like purposes.

Defence of the Realm Acts. This was a series of Acts passed in order to give the Government various powers necessary, or deemed to be necessary, for the successful prosecution of the war with Germany and her allies. The first of them was the Defence of the Realm Act, 1914, which received the royal assent on 8th August, 1914. That Act was amended by the Defence of the Realm (No. 2) Act, 1914. These two Acts applied only to matters which directly and obviously affected the defence of the country. On 27th November, 1914, both of these Acts were repealed and replaced by the Defence of the Realm (Consolidation) Act, 1914. That Act was itself amended by the Defence of the Realm (Amendment) Act, 1915; and it was extended, for the purpose of the production of war materials, by the Defence of the Realm (Amendment) (No. 2) Act, 1915, and, for the purpose of controlling the trade in all intoxicating liquors, by the Defence of the Realm (Amendment) (No. 3) Act, 1915. The most important feature of these Acts was that they gave the Government power to make—and the

Government did make—a multiplicity of r lations for effectuating the purposes of the Acts. The Defence of the Realm (Consolidation) Act and the three amending Acts, were all expressed to be in force only during the war, the date of the termination of which was by Order in Council (S. R. & O., 1921, No. 1276), made pursuant to the Termination of the Present War (Definition) Act, 1918, declared to be 31st August, 1921.

The above Acts are those popularly known as the Defence of the Realm Acts. The other Acts which may be included in that term are the Defence of the Realm (Acquisition of Land) Acts, 1916 and 1920. The Act of 1916 empowered the Government to remain, for a period of two years after the termination of the war, in possession of lands which had been occupied in connection with the war, and provided that the period of two years might be extended to five years. The Act of 1920 is an extending Act.

Defendant is a person against whom an action, information, or other civil proceeding (other than a petition) is brought, or against whom summary proceedings are brought, before magistrates and justices for the recovery of penalties. See COUNTERCLAIM; PRISONER; RESPONDENT.

Defendemus. (We will defend.) In the time of Bracton this was a word ordinarily used in grants. It imported a covenant by the grantor to secure the grantee in the enjoyment of what was granted.

Defender of the Faith; Fidei Defensor. By Bull issued in 1521 Pope Leo X. conferred the title of Fidei Defensor upon Henry VIII. in recognition of the services rendered to the Church by that sovereign's confutation of the heresies of Martin Luther. Subsequently differences arose between Henry and the Pope, and by another Bull, issued in 1588, the grant of the title was impliedly revoked. Henry, however, persisted in retaining the title, in which he was expressly confirmed by the statute 35 Hen. 8, c. 3, and the title, which upon the coinage is indicated by the abbreviation Fid. Def., has ever since been used by the reigning sovereign.

Defendere se per corpus suum. (To defend himself by his body.) The phrase is used by Bracton (q.v.) of a person who accepted a challenge to trial by battle (q.v.).

Defendere unica manu. To defend oneself with the mere hand, which anciently meant to lay one's hand upon the Scriptures and take an oath as compurgator (q.v.). See MANUS.

Defensiva. A title of the Wardens of the , who were in early times the defenders of the borders of the country (see Ranulphus de Diceto, *Ymagines Historiarum*, *sub ann.* 1153). See MARCHES.

Defensive Allegation. In the old ecclesiastical practice this was the allegation (q.v.) in which the defendant set forth the facts, if any, on which he relied as a defence to the charge preferred against him.

Defenso, In. Land reserved for corn or hay to the exclusion of pasture, or woodland fenced in against cattle, was anciently said to be *in defenso*.

Defensum. Anciently this meant any fenced ground.

Deficiente uno sanguine non potest esse hæres (3 *Co.* 41). (One blood being wanting, he cannot be heir.) This was formerly true, but now those of the blood (q.v.) and the half-blood are on the same footing.

De fide et officio judicis non recipitur quæstio; sed de scientiâ, sive error sit juris sive facti (*Bac. Max. Reg.* 17). (Of the good faith and integrity of a judge no question can be entertained; but it is otherwise as to his knowledge, whether the error be one of law or fact.)

It is a general rule that no action will lie against a judge of a superior Court for any act done by him in the exercise of his judicial functions, provided such act, though mistaken, was within the scope of his jurisdiction; but his errors may be corrected by appellate tribunals in all cases where the law allows of an appeal.

Definitive Sentence. In ecclesiastical practice this means a final judgment, under the hand of the judge, which puts an end to the case. It is to be distinguished from an interlocutory sentence; but its effect is the same as that of a final interlocutory decree: the latter is a statement, under the hand of the registrar, that a final judgment has been pronounced by the judge.

Deforcement; Defenceor; Deforciant. Deforcement was where a man wrongfully held lands to which another person was entitled. It therefore included disseisin, abatement, discontinuance, and intrusion, but it was applied especially to cases, not falling under those heads, where the person entitled to the freehold had never had possession: thus, where a lord had a seignory, and lands escheated to him *propter defectum sanguinis*, but the seisin was withheld from him, this was a deforcement, and the person who withheld the seisin was called a deforceor. So if a man covenanted to convey lands to another

and refused to do so, continuing in possession against him, this wrongful possession was a deforcement; whence in levying a fine of lands, the person against whom the fictitious action was brought upon a supposed breach of covenant, was called the deforciant. See QUOD EI DEFORCEAT; FINE; TENANT BY SUFFERANCE.

Degradation is, or was, an ecclesiastical censure, whereby a clergyman is removed from the ministry, that is, deprived of Holy orders, after the formal removal of the insignia of his office. It has been obsolete, or nearly obsolete, since the Reformation, deposition (q.v.), which has the same effect as degradation, being now usually substituted.

De gratiâ speciali, certâ scientia, et mero motu; talis clausula non valet in his in quibus præsumitur principem esse ignorantem (1 *Co. Rep.* 53). The clause, "Of our special grace, certain knowledge, and mere motion," is of no avail where it may be presumed that the king was ignorant: and where the king has purported to give to lands, or to a title of honour, a new descendable quality unknown to the law, then, as the king can do no wrong, he will be presumed to have been kept in ignorance of the purported effect of his grant.

Degree. This means a step in the line of descent or consanguinity; it is also used in the criminal law in the case of a principal in the first degree, that being one who commits a felony either himself or through an innocent person, and of a principal in the second degree, that is to say one who is either actually or constructively present and aids and abets the principal in the first degree.

Degrees in the law of real actions were certain alterations in the rights of a person who had disseised another of his land, as where the disseisor conveyed the land to a stranger, or died seised so that the land descended to his heir. The nature of the action to be brought by the disseisee depended upon the number of degrees between the original disseisor and the person actually in possession. See AIEL; BESAIEL; TRESAIEL.

Dehors. (Without.) Used anciently in pleadings of a thing irrelevant to the matter in issue.

Dei judicium. See JUDICIUM DEI.

De injuria sua propria absque tali causa. (Of his own wrong without any such cause [as is alleged].) This, which was generally known as the traverse *de injuria*, was a species of traverse, or denial, by replication used in actions of trespass and actions on the case, and in the plea in bar in replevin. This traverse went out of use after the enactment of the now repealed s. 79 of the Common Law Procedure Act, 1852, under which, as now under Ord. 19, r. 18, a joinder of issue can do what was formerly done by the traverse *de injuria*.

De jure. By right, as opposed to *de facto* (q.v.).

De la plus beale (or belle) dower. See DOWER.

Delatura. In Anglo-Saxon times this meant an accusation. Later (Leg. Hen. 1, c. 64), it also meant the reward given to an informer. In Scots law to delate means to accuse.

Del. credere. A *del credere* agent, or agent acting under a *del credere* commission, is an agent for the sale of goods who, in consideration of a higher reward than is usually given, guarantees the due payment of the price of all goods sold by him, that is to say, engages to pay the price himself if the purchaser does not. See COMMISSION.

Delectus personæ. (The choice of an individual.) The phrase occurs in connection with the rule that, in the absence of agreement to the contrary, no new member can be introduced into a partnership without the consent of all the existing partners.

Delegata potestas non potest delegari (2 *Inst.* 597). (A delegated power cannot be delegated.) This rule, says Mr. Broom, applies wherever the authority involves a trust or discretion in the agent for the exercise of which he is selected; but does not apply where it involves no matter of discretion, and it is immaterial whether the act be done by one person or another, and the original agent remains responsible to the principal.

Delegated Legislation. See ORDERS IN COUNCIL; PROCLAMATIONS, ROYAL; PROCLAMATIONS, STATUTORY; STATUTORY RULES AND ORDERS.

Delegates were commissioners appointed by the Crown, by a special commission of delegacy, to hear an ecclesiastical cause either in lieu of the archbishop of the province, or by way of appeal from him, and to hear appeals from the Court of the Admiral (q.v.). These commissioners formed the Court of Delegates which was abolished by the Privy Council Appeals Act, 1832; its jurisdiction was transferred to the Judicial Committee of the Privy Council by the Judicial Committee Act, 1833, which created the Judicial Committee.

The Commission of Delegacy was first issued under the authority of the statute 25 Hen. 8, c. 19. Ancillary to it was the Commission of Adjuncts, which was issued

whenever it was for any reason desired to increase the number of delegates. A Commission of Review was occasionally issued during the reign of Elizabeth, in order that there might be a rehearing of a case heard and decided by the Court of Delegates.

Delegatus non potest delegare (2 *Inst.* 597). A person to whom a power, trust, or authority is given to act on behalf or for the benefit of another, cannot delegate it—that is, he cannot put another person in his place—unless he is authorised to do so. (See SUBSTITUTE.) The rule applies especially to persons acting under powers of attorney, to directors of companies, and to trustees, executors, etc. It must not, however, be understood of merely ministerial acts, which do not involve the exercise of discretion, and which the *delegatus* cannot reasonably be expected to perform himself. Therefore a trustee may employ a banker, steward or agent to receive or pay money or the like. See AGENCY.

Trustees, executors and administrators engaged on war service in connection with the war of 1914-20 were permitted by the Execution of Trusts (War Facilities) Acts, 1914 and 1915, to delegate the execution of their trusts by power of attorney.

Deliberandum est diu quod statuendum est semel (12 *Rep.* 74). (That which is to be resolved once for all, should be long deliberated upon.) Coke had been summoned to the Council and urged to give off-hand an opinion to the effect that the King could, by proclamation, prohibit the erection of new buildings in London. He got out of the difficulty by urging that the matter required consideration by himself and the other judges: for *Deliberandum est diu, etc.* See PROCLAMATIONS, ROYAL.

Delicatus debitor est odiosus in lege (2 *Bulst.* 148). (A luxurious debtor is odious in law.) Mr. Broom quotes the maxim as containing the word *Delegatus* instead of *Delicatus*. The maxim, as here quoted, was used by Coke in a case where complaint was made that prisoners in the Marshalsea were allowed out continually upon bail and in the custody of warders (by "bail and baston"—see BASTON), so that they preferred to stay in the prison and spend their money in luxurious living instead of in payment of their creditors. Coke promptly decided that this practice was illegal and must cease.

Deliverance. See REPLEVIN.

Down to 1827, when a prisoner pleaded "Not Guilty," the clerk of the Court asked, "How will you be tried?"; to which the prisoner replied, "By God and my country"; and the clerk then said, "May God send you a good deliverance." The Criminal Law Act, 1827 s. 1, provided that any prisoner should be deemed "to have put himself upon the country for trial" by the plea of "Not Guilty."

Delivery. Delivery primarily signifies the act of transferring the possession of a moveable thing from one person to another: thus the delivery of goods is a necessary part of the transaction called a sale (q.v.). Delivery is either actual or constructive: thus if goods cannot conveniently be actually handed from one person to another, as if they are in a warehouse or a ship, the delivery of the key of the warehouse, a delivery order, bill of lading, etc., is a constructive or symbolical delivery of the goods themselves. See LIVERY; DELIVERY ORDER.

In conveyancing, delivery is that part of the operation of executing a deed by which the grantor signifies his intention when and how the deed is to take effect. Delivery is of two kinds: (1) absolute delivery, when the grantor intends the deed to take effect at once and unconditionally, even though he should retain the deed in his own possession; this kind of delivery is generally effected by the grantor saying at the time of signing and sealing the deed, "I deliver this as my act and deed"; (2) delivery as an escrow (q.v.), when the deed is delivered by the grantor to a third person not a party to it, to be delivered up to the grantee upon the performance of a condition, as the payment of money or the like.

Pleadings are delivered by being left at the address of the opposite party or his solicitor, unless the party has failed to enter an appearance, in which case the pleading (if one is required) is delivered by being filed with the proper officer. See SERVICE.

As to execution by delivery, see DELIVERY, WRIT OF; JUDGMENT; EXECUTION.

Delivery order is an order addressed by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order. Delivery orders are chiefly used in the case of goods held by dock companies, wharfingers, etc. Such an order is not a document of title, and therefore does not transfer the property or divest the vendor's lien for the purchase-money, until it is acted on by the holder obtaining either (i) actual delivery, or (ii) an entry of his title in the wharfinger's books, or (iii) the issue of a dock warrant in his name, which last operation would apparently presuppose the second.

Until he does one of these things, the original owner may obtain delivery to himself or transfer the property in the goods to someone else. See DOCK WARRANT.

Delivery, Writ of, is a writ of execution under R. S. C. Ord. 42, r. 6, to enforce a judgment for the delivery of chattels. It may command the sheriff to cause the chattels mentioned in the writ to be returned to the person who has obtained the judgment; and if the chattels cannot be found, to distrain the person against whom the judgment was given until he returns them. Such a writ is known as a writ of delivery absolute. Or the writ may order the sheriff to cause the chattels to be delivered to the plaintiff, or alternatively to levy against the defendant for the value of the chattels as assessed in the judgment and also for the assessed damages for detention and the costs. A writ in the latter form is known simply as a writ of delivery. Either writ is to be in the form prescribed by Ord. 48, r. 2, and Appendix H., Form 10. If a writ of delivery absolute will not be effectual, a writ of assistance (q.v.) may be employed.

Delusions. The general rule is that where a person suffers from mental delusions, his capacity to enter into contracts and make testamentary and other dispositions of his property is not affected by the delusions unless they are calculated to influence the particular contract or disposition, even although they are connected with its subject-matter. Thus where a person at the time he granted a lease laboured under the delusion that the property was impregnated with sulphur, it was properly left for the jury to say whether as a matter of fact that delusion made him incompetent to grant the lease. See LUNATIC.

Dem. In the action of ejectment (q.v.) before 1852, the action was by "*Doe dem. Smith,*" Smith being the real plaintiff and Doe an imaginary person to whom Smith had made an equally imaginary lease. *Dem.* meant "on the demise of."

Demand, says Coke, "in the understanding of the common law is of so large an extent as no other one word in the law is," and therefore if a person release to another all manner of demands, this is the best release that the latter can have, for by it all actions, executions, rights of entry, rents, commons, profits à prendre, obligations, contracts, etc., are released and discharged. See DEMANDANT.

A demand also signifies a request addressed to a person that he will do some act which he is legally bound to do, after the request has been made. Thus bills of exchange and promissory notes may be, and cheques must be, made payable on demand. When a bill or note is made payable on demand the Statute of Limitations does not in general begin to run until the demand is made, unless it appears that the debt was recoverable and not merely payable on demand.

It is a doctrine of equity that where a claim is put forward which arose many years ago, and it is clear from the circumstances of the case that the person putting it forward has long been cognizant of his rights and has neglected to enforce them, the Court will decline to recognise his claim, although it may not be barred by the Statute of Limitations. Such a claim is called a stale demand. The term is chiefly used with reference to trusts, to which the Statute of Limitations do not in general apply, but it is also sometimes applied to ordinary debts. Thus, where A gave B a promissory note payable three months after demand, no interest being reserved, and A paid two half-yearly instalments of interest within eighteen months from the date, but no further interest was paid, and no proceedings were taken to enforce payment of the note for nearly forty years, the Court expressed an opinion that even if the claim had not been barred by the statute it ought to be rejected as a stale demand. See also ACQUIESCENCE.

Demandant was the technical name for the actor in a real action, corresponding to "plaintiff" in a personal or mixed action. See ACTOR.

De medietate linguæ. See JURY.

Demesne. In its primary sense "demesne" signifies "own," or that which is a man's private property. Thus Britton speaks of the right of some lords to hang their tenants on their *fourches demeyne* or private gallows. And see DE SON TORT DEMESNE.

Hence "demesne," as applied by the old writers to lands or rents, signified that they were in the possession or occupation of a freehold tenant, or of his lessees for years, as opposed to those which others held of him for an estate of freehold. Thus, if A was seised for an estate of freehold of eleven acres of land, and granted six of them to B, to be held by him as A's tenant, then A was said to be seised of the remaining five *in dominico*, and of the six which he had granted to B he was seised *in servitio*.

Under the old law, when an heir brought an action to recover land belonging to his ancestor, he had to allege in the writ that his ancestor died seised of the land "in his demesne as

of fee," meaning that the immediate freehold in severalty was vested in him for an estate of fee simple, as opposed to one who held land for a term of years or for life only, or in common with others, or *in servitio*. From this use of the phrase, *in dominico suo ut de feodo* came to be the technical description of an estate of fee simple in a real action.

Demesne was also applied to those parts of a manor which were in the occupation of the lord, or of his villeins, or tenants for years, being cultivated "for the necessary sustentation, maintenance, and supportation of the lord and his household," as opposed to that part of the manor which had been granted out to free tenants in consideration of services; hence, a manor is said to be held *in dominico* and *in servitio*, or to consist of demesnes and services. At the present day the demesne lands of a manor consist (1) of the lord's demesnes, or that part which is in the actual occupation of the lord; (2) of the copyholders' demesnes, or the part held by copyhold tenants, and (3) of the waste land of the manor. See MANOR; SERVICE.

The demesne lands of the Crown are those which belong to the sovereign in his public capacity, that is, by succession from his predecessors, or by escheat, etc., as opposed to his private estates, namely, such as have been acquired by him by moneys out of his privy purse, or by gift or inheritance from any person other than his predecessors in their public capacity. The demesnes are under the management of the Commissioners of Woods, Forests, and Land Revenues, and their revenue forms part of the Consolidated Fund (q.v.). See ANCIENT DEMESNE; CIVIL LIST; SEIGNORY; MANOR.

Demesne is a form of the Norman French *demeyne*, which itself is derived from the Latin *dominium*, ownership.

De minimis non curat lex (*Cro. Eliz.* 353). (The law does not concern itself with trifles.) Courts of justice generally, says Mr. Broom, do not take trifling and immaterial matters into account, except under peculiar circumstances, such as the trial of a right, or where personal character is involved; they will not, for instance, take notice of the fraction of a day, except in cases where there are conflicting rights, for the determination of which it is necessary that they should do so.

Demise. This seems originally to have meant any transfer or succession of a right. Thus, in the old books, copyholds are said to be demisable by copy of court roll, meaning that the lord can grant them according to the custom of the manor. So "demise," as applied to the Crown, signifies that change in the succession which takes place when the royal dignity is transferred or demised from one king to his successor. This ordinarily occurs on the death of the king, but the expression is also used in the event of the king being deposed. The effect of a series of enactments, culminating in the Demise of the Crown Act, 1901, is that public business and the tenure of a public office is not now affected by the death of the sovereign.

In its ordinary sense, to demise is to grant a lease of lands or other hereditaments. It was formerly applied, though rarely, to chattels—*e.g.*, a ship. The word "demise" in a lease of land under seal implies a covenant for quiet enjoyment. See COVENANT.

Demise and Redemise. Mutual leases of the same land or of something issuing out of it. They were formerly used upon, for instance, the creation of a rent-charge.

Demonstrative. See LEGACY.

Demoratur. (He demurs.) Compare MORATUR IN LEGE.

De morte hominis nulla est cunctatio longa (*Co. Litt.* 134). (Concerning the death of a man there is no long delay.) This maxim is cited by Coke in connection with the statement that pleas of the Crown affecting life were disposed of expeditiously.

Demur. In pleading, to demur was to raise an objection by demurrer (q.v.).

Formerly, at common law, in all actions for debt against infant heirs by specialty creditors of their ancestors, either party was entitled to pray that the parol might demur, that is, that the proceedings might be stayed until the heir had attained his full age. This rule was the foundation of a similar practice in equity, where it was by analogy extended to all cases in which the real estate of an infant was to be sold or conveyed under the decree of the Court—*e.g.*, foreclosure and partition suits. (See DAY TO SHOW CAUSE.) The demurrer of the parol was abolished by the Debts Recovery Act, 1830, s. 10.

Demurrable. A pleading, petition, or the like, was said to be demurrable when it does not state such facts as support the claim, prayer, or defence put forward.

Demurrage, in the law of merchant shipping, means (1) the detention of a ship by the freighter beyond the number of days—called lay days—allowing for loading or unloading, and (2) the sum fixed by the contract of affreightment (the charter-party, for instance), as payable to the shipowner for such detention. The number of days—called days of demurrage

—for which the ship may be detained at the agreed rate of demurrage is generally fixed by the contract. If the ship is detained beyond the days of demurrage, a claim for damages arises in respect of such further detention. See LAY DAYS; RUNNING DAYS.

Demurrer. In an action in the High Court, until the making of Order 25 of R. S. C. in 1883, a demurrer was a pleading by which one of the parties in effect alleged that the facts stated by the opposite party in the preceding pleading (or in a particular part of it), even assuming them to be true, did not sustain the contention based on them; that is, did not show a good cause of action or ground of defence, set-off, counterclaim, reply, etc. Thus, in an action on a bill of exchange, by an indorsee against the acceptor, if the defendant in his statement of defence alleged that there was no consideration for the acceptance, the plaintiff might demur to the statement of defence, because a *bonâ fide* holder for value of a bill of exchange could then, as he can now, recover against the acceptor notwithstanding a defect in the title of the original holder. Such simple cases as this did not often occur in practice, and usually demurrers raised new points, *e.g.*, whether the acceptance of a composition by the joint creditors of a partnership under s. 126 of the now repealed Bankruptcy Act, 1869, was a satisfaction of the separate debts of the partners.

When a demurrer came on for hearing and the party demurring took an objection which might have been but was not raised by the demurrer, this was called demurring *ore tenus*.

If, on the argument of a demurrer, judgment was given in favour of the demurring party, the demurrer was said to be allowed; if it was given against him, it was said to be overruled.

A demurrer afforded a rapid and inexpensive mode of determining a point of law in question between the parties; and if the whole case lay in that question, the determination of the demurrer determined the result of the action. If, however, there were several questions of fact or law in the case, or if the demurrer was occasioned by bad pleading, the action went on notwithstanding the determination of the demurrer, because in the former case the remaining questions had to be decided, and in the latter case the Court generally gave the party against whom a demurrer had been allowed leave to amend his pleading, so as to state facts showing a cause of action or ground of defence. Questions of law might also be raised by special cases, motions for judgment and new trial, etc.

Before the Judicature Acts the nature of demurrers differed according as they were used at common law or in equity. At common law there were two kinds of demurrers, *viz.*, demurrers upon pleading and demurrers upon evidence. Demurrers upon pleading were similar to demurrers under the practice down to 1883, except that a joinder in demurrer was necessary by the party whose pleading was impeached, and that the pleadings down to the joinder had to be made up into a demurrer book. Before the Common Law Procedure Act, 1852, demurrers upon pleading were of two kinds—general demurrers, or demurrers to the substance, raising a point of law, and special demurrers, or demurrers to the form, used where the pleading demurred to did not follow the rules of pleading. The latter were called special because the defect of form objected to had to be specified in the demurrer. Special demurrers were abolished by the Common Law Procedure Act, 1852, s. 51. There were also demurrers to aid prier, voucher, receipt, waging of law and the like, but these were obsolete long before the passing of the Judicature Acts. A demurrer to evidence was raised upon the trial of an action; the party demurring declared that he would not proceed because the evidence offered on the other side was not sufficient to maintain the issue. The practice of moving for a new trial has superseded this proceeding. In equity demurrers were rarely pleaded except by defendants, and were of several kinds, of which demurrers for want of equity, for want of parties, and for multifariousness, were the most important. If a demurrer was so framed as to bring in facts not stated in the bill, it was called a speaking demurrer, and would be overruled.

Demurrers were abolished in 1883 as regards pleadings in the King's Bench and Chancery Divisions by R. S. C., Ord. 25, which prescribes the proceedings in lieu of demurrer which are now available.

Demurring was also applicable to various proceedings not being actions, *e.g.*, to some old common law writs, and to an indictment or information. Demurrers in criminal prosecutions by indictment or information seldom occur now. A general demurrer is founded on some substantial defect in the indictment, and is the only demurrer now available. A special demurrer, or demurrer in abatement, was founded on some formal defect; special demurrers are quite obsolete as the result of

the wide powers of amendment given by the Indictments Act, 1915. See ARREST OF JUDGMENT; AMENDMENT; COUNT.

Demy-sangue. An old equivalent for the half-blood. It is mentioned in, for instance, the *Termes de la Ley*, published in 1641.

Denariate. As much land as was worth one *denarius*, or penny, per annum. It seems to have been an acre.

Denarii. Anciently this meant money generally.

Denarii de caritate. A customary offering anciently made at Whitsuntide to cathedral churches.

Denarii Quadragesimales. See QUADRAGESIMALS.

Denarii Sancti Petri. Peter's Pence; an annual payment made by every household to the Pope until it was abolished by the statute 25 Hen. 8, c. 21.

Denarius. The old English penny.

Denarius Dei. The earnest-money paid to bind a bargain. It was anciently handed over to the poor or to the Church.

Denarius tertius comitatus. Anciently this was a third part of the fines, etc., levied in the old County Court. It, or a composition for it, was paid to the earl of the county; the other two parts went to the king.

Denison's Act. The popular title of the statute 18 & 19 Vict. c. 34: it was repealed by the Elementary Education Act, 1873.

Denization; Denizen. A denizen in the primary but obsolete sense of the word is a natural-born subject of a country, or a native or inhabitant of a city or liberty. Denization therefore originally signified making an alien into a denizen or natural-born subject, and thus "denizen" afterwards acquired the special sense of an alien who had been "indenized" or made a natural-born subject.

Denizen in its modern sense denotes a person who is an alien born, but who has obtained from the Crown letters patent, called letters of denization, to make him an English subject; formerly there were several differences between denizens and naturalized subjects, principally with reference to the inheritance of land; but since the passing of the Naturalization Act, 1870 (now repealed and replaced by the British Nationality and Status of Aliens Act, 1914), these differences have become unimportant, and now that naturalization can be easily obtained, letters of denization are seldom granted; but s. 25 of the Act of 1914, like s. 13 of the Act of 1870, expressly preserves the right of the Crown to issue letters of denization. See NATURALIZATION.

Denman's (Lord) Act. The popular title of the Evidence Act, 1843.

Denman's (Mr.) Act. The popular title of the Criminal Procedure Act, 1865.

De non apparentibus, et non existentibus, eadem est ratio (5 *Co.* 6). (Of things which do not appear and things which do not exist, the rule in legal proceedings is the same.)

What is not in evidence is presumed to be non-existent. This maxim applies, says Mr. Broom, where a party seeks to rely upon any deeds or writings which are not produced in Court, and the loss of which is not accounted for or supplied in the manner which the law prescribes; for in this case they should be treated, as against such party, as if non-existent.

Denshiring. A corruption of Devonshiring. It means to top-dress land with the ashes of burned weeds, turf, etc. Another name for the process is burn-beating.

Dentists. Down to 1878 anyone could practise dentistry and call himself a dentist or anything else that he pleased. The Dentists Act, 1878, did not interfere with the right of anyone, no matter how ignorant, to practise dentistry. It provided, however (s. 3), that unless he was registered under that Act, or was a qualified medical practitioner, he could not use the titles of "dentist" or "dental practitioner" or any other word or words implying that he was registered or that he was specially qualified to practise dentistry, and (s. 5), that he could not recover his fees in any Court, though it did not interfere with his right to sue for the cost of materials—such as a set of teeth—provided by him. In this state of the law it was held to be no offence for an unregistered and unqualified person to advertise himself as, for instance, "the world's expert adapter of teeth. Extraction 1s. by my own special system": and such persons carried on business extensively.

The Dentists Act, 1921, which became law on the 28th July 1921, enacts (s. 1) that "No person, unless he is registered in the dentists register under the Dentists Act, 1878, shall practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise dentistry," under a penalty not exceeding £100 recoverable on summary conviction; it preserves the rights of qualified medical practitioners; it allows duly registered pharmaceutical chemists or chemists and druggists to extract, without anæsthetics, teeth where no registered or qualified person is available, and permits minor dental work in any public dental service to be done by any

person under the supervision of a registered dentist. The same section, however, provides that it is not to come into operation for a period (known (see s. 14) as the interim period) consisting of one year from 28th July, 1921, or such further time not exceeding two years as may be fixed by Order in Council; and by Order dated 14th July, 1922 (S. R. & O., 1922, No. 809), it was directed that s. 1 should come into operation on 30th November, 1922, so that the interim period ended 29th November, 1922.

The Dentists Act, 1878, s. 6, provides that the persons entitled to be registered under that Act are (1) licentiates in dentistry or dental surgery of any of the universities, or of any of the recognised medical or surgical authorities in the United Kingdom, and (2) persons who were on the 22nd July, 1878, *bonâ fide* practising as dentists, whether in conjunction with medicine, surgery or pharmacy or otherwise, and (3) certain persons with foreign and colonial dental certificates. The second and third of these classes had by lapse of time practically disappeared from the register.

Now, however, the Act of 1921 establishes by s. 2 a Dental Board, and provides by s. 3 that it may admit to the dentists' register established under the Act of 1878, not only persons admissible under s. 6 of that Act, but also any person of good character who had attained the age of twenty-three before 28th July, 1921, and who applies for registration during the interim period (1) if he had for any five years since 28th July, 1914, been practising dentistry in the United Kingdom, or if he is a duly registered pharmaceutical chemist or duly registered chemist and druggist who immediately before 28th July, 1921, had been in full practice as a dentist; (2) if on 28th July, 1921, he had practised dentistry in the United Kingdom, no matter for how short a time, and if he passes a prescribed examination before 28th July, 1923; (3) if he was a member of the Incorporated Dental Society (q.v.) before 28th July, 1921; and (4) if he had been a dental mechanic for any five of the years since 28th July, 1914, and if before 28th July, 1931, he passes a prescribed examination. And persons on the dentists register may use the title of "dentist" or "dental practitioner" (s. 4).

The effect of the Act of 1921 is clearly to lower temporarily the standard of professional education implied by the use of the title "dentist": but, on the other hand, every person practising dentistry after the interim period must be on the register and will be liable to be struck off (see INFAMOUS CONDUCT) if he misconducts himself; and ultimately, as the unregistered dentists and dental mechanics and chemists who are admitted during the interim period die out, there will be no one upon the register except persons who have received a proper course of instruction.

See BARBERS AND CHIRURGEONS.

Deodand. Formerly if a personal chattel was the immediate and accidental cause of the death of any reasonable creature (as where a man was run over by a cart or killed by an ox), it was forfeited to the Crown under the name of a deodand (*Deo*, to God, and *dandam*, to be given). This rule was abolished by the statute 9 & 10 Vict. c. 62. Its revival, as regards motor cars and motor cycles, would enormously increase the security of life in this country.

Departure, says Coke, "in pleading, is said to be when the second plea containeth matter not pursuant to [the party's] former [plea], and which fortifieth not the same, and thereupon it is called *decessus*, because he departeth from his former plea." Thus, if a plaintiff, suing as the executor of A B, alleges in his statement of claim that the cause of action accrued to A B in his lifetime, and in his reply alleges that it accrued to him as executor after A B's death, this is a departure. Departure was forbidden by the rules of common law pleading, and is so still by the modern rules, although the term itself is not used. See R. S. C. Ord. 19, r. 16.

Depasture is to feed cattle on the grass, etc., growing on land. See COMMON.

Depeculation. A term used in the seventeenth century to describe various forms of dishonesty by servants of the Crown which are now dealt with as larceny, embezzlement, or common law cheats.

Deponent is a person who makes an affidavit or deposition, as opposed to a declarant who makes a declaration and to a witness who makes an oral statement. See DEPOSITION.

Deportation. See ABJURATION; ALIENS; TRANSPORTATION.

Deposit. An equitable deposit is a deposit of title-deeds or other documents of title, so as to create an equitable charge. See CHARGE; MORTGAGE.

A deposit in Court is where property is deposited with an officer of the Court for safe keeping, pending litigation, *e.g.*, until a question as to the person entitled to its possession is determined; or where money is paid into Court as security, *e.g.*, under the Parliamentary Deposits Act, 1846, as security for

the execution of a railway or similar work. See PAYMENT INTO COURT.

On a sale of real estate, and on a sale by auction of personal property, it is usual for the purchaser to pay the vendor or auctioneer a deposit, that is, part of the purchase-money, by anticipation, as security for the completion of the purchase.

Deposition, in ecclesiastical law, is an ecclesiastical censure by which a clergyman is removed from the ministry, that is, deprived of Holy orders, as opposed to deprivation of benefice.

Where a clergyman is guilty of an immoral or criminal act, or of an ecclesiastical offence not relating to doctrine or ritual, he can be deposed under the Clergy Discipline Act, 1892, s. 8. Deposition for offences as to doctrine or ritual can be effected under the Church Discipline Act, 1840.

See DEGRADATION; DEPRIVATION; HOLY ORDERS.

In procedure, depositions, in the most general sense of the word, are the statements on oath of a witness in a judicial proceeding. It is in this sense that the term is used when we say that where a witness is dead, or is so dangerously ill that he will never be able to attend and give evidence, his depositions at a former trial are admissible in evidence on a subsequent trial between the same parties. In criminal procedure, the depositions of witnesses taken before a magistrate or justices of the peace, against a person charged with an indictable offence, are subject to the same rule, provided that when the deposition was taken the accused had the right and opportunity to cross-examine (Indictable Offences Act, 1848, s. 17; Criminal Law Amendment Act, 1867, ss. 6, 7).

In the practice of the High Court, deposition is used in a special sense to denote a statement made orally by a person on oath before an examiner, commissioner, or officer of the Court (but not in open Court), and taken down in writing by the examiner or under his direction (R. S. C. Ord. 37, r. 5). The deposition is filed, and is used as evidence in such manner as the Court directs. See COMMISSION; EVIDENCE; EXAMINER.

Deprave, in ecclesiastical law, means to despise or exhibit contempt for. Depraving the Lord's Supper (1 Edw. 6, c. 1, s. 1; 14 Car. 2, c. 4, s. 20) or the Book of Common Prayer (1 Eliz. c. 2, s. 3; 14 Car. 2, c. 4, s. 20) is a misdemeanour, punishable with fine and imprisonment.

Deprivation is an ecclesiastical censure, whereby a clergyman is deprived of his parsonage, vicarage, or other spiritual promotion or dignity, on account of some offence. Where a clergyman is convicted of treason, felony, grave misdemeanour, or adultery, or where a bastardy or judicial separation order is made against him, or if he is guilty of immorality or of other ecclesiastical offences not relating to doctrine or ritual, he may not merely be deprived, but also made incapable of holding preferment (Clergy Discipline Act, 1892, ss. 1, 2, 6). Deprivation for offences not coming within the Act of 1892 generally takes place under the Church Discipline Act, 1840. See CENSURE; DEGRADATION; DEPOSITION.

Deputy-Lieutenant. See LORD LIEUTENANT.

Deraign, said Littleton, "commeth of the French word *derayer* or *deraigner*, that is to say, to displace or to turne one out of his order. . . . So when a monke is deraigned, he is degraded and turned out of his order of religion, and become a lay man."

In the old books to deraign a warranty paramount seems to have meant to enforce or take advantage of it. Thus if A conveyed land to B with warranty, and B conveyed it to C with warranty, and C was evicted and recovered lands of equal value against B, and B recovered lands of equal value against A, then B was said to deraign the warranty paramount.

There was a Norman word, *desreyner*, to prove one's case in Court, from the late Latin *disrationare*. Hence came deraign, meaning to establish one's right, or to recover by legal proceedings.

Derelict; Dereliction. Dereliction is the act of abandoning a chattel or moveable; and so, says Blackstone, "if one is possessed of a jewel, and casts it into the sea or a public highway, this is such an express dereliction, that a property will be vested in the first fortunate finder that will seize it to his own use."

The term is, however, more commonly used of ships, which are said to be derelict when they are abandoned on the high seas. If the ship is salved, a greater amount of remuneration is frequently allowed to the salvors than in ordinary cases of salvage. "Abandonment" here merely means physical abandonment, not necessarily that kind of abandonment which takes place in the case of a constructive total loss; therefore if a derelict is salved it belongs to the owner, unless he has given notice of abandonment to the underwriters. See ABANDONMENT OF CARGO *or* SHIP. The Merchant Shipping (Convention) Act, 1914, s. 2,

requires the master of a British ship to report any dangerous derelict of which he comes to know.

The term is also applied to land left dry by the sea shrinking back below the usual high-water mark, or by a river changing its bed. If this dereliction is sudden and considerable, the new land, in the case of the sea or a tidal river, belongs to the Crown; in the case of a non-tidal river, the property in the bed and the adjoining land remains as before, so that if the river leaves its bed altogether, the old bed is divided between the riparian proprietors according to the *medium filum*, while the new bed remains the property of the person over whose land the river has made itself a course. If the dereliction is by small and imperceptible degrees, the new land goes to the owner of the adjoining land; and if the owner of the original bed of the river had a several fishery over it, he has a similar right over the new bed. See ACCESSION; ACCRETION; ALLUVION.

Derivativa potestas non potest esse major primitivâ (*Wing.* 26). (A derivative power cannot be greater than the power from which it is derived.)

Derivative. Derivative conveyances are the same as secondary conveyances (q.v.). See also SETTLEMENT.

Derogate; Derogation. To derogate from a right, obligation, or the like, is to destroy, prejudice or evade it. Thus there is a maxim that no man can derogate from his own grant, which is chiefly applied to cases of the creation of easements by implied grant. If a man erect a house on his own land, and afterwards sell it to another, reserving the adjoining land, he cannot obstruct the windows in the house by building on the adjoining land, because the grant of the house contains an implied grant of the easement of light to its windows, and if the grantor were allowed to obstruct them he would derogate from his grant.

Agreements or provisions are said to be in derogation of the marriage contract when they tend to disturb or prejudice the status of lawful marriage; thus a provision in a settlement for the future separation of the husband and wife is in derogation of the marriage contract, because it is calculated to facilitate the dissolution of the marriage contract, which the policy of the law is to preserve intact and inviolate. See SEPARATION DEEDS; IMMORALITY.

An agreement is said to be in derogation of an Act of Parliament or of a rule of law, when it enables the parties to evade an Act passed or a rule made not for their benefit, but in the interest of the public.

Descent is what takes place when land or some interest in land or other realty belonging to a person passes on his death intestate to some one related to him by consanguinity, either directly or by reference to some other person, according to certain rules of law. Descent, therefore, is opposed on the one hand to what takes place when land on the death of a person passes to someone else by virtue of a gift or limitation to him as "*persona designata*" (q.v.); and on the other hand to the devolution of personal property, which is governed by the rules of distribution (q.v.).

The rules by which the descent of realty is governed have two objects: first, to determine the stock of descent, that is, the person from whom the descent is to be traced, or, in other words, the person with reference to whom the question of consanguinity is determined; and, secondly, to settle who is to be selected from the persons related by consanguinity to the stock of descent.

The rule which determines the stock of descent is that in every case descent shall be traced from the purchaser, that is, from the last person who acquired the land otherwise than by descent (Inheritance Act, 1833, s. 2). (See PURCHASER.) Thus if land is conveyed or devised to A and he dies intestate, the descent is traced from him, because he was the purchaser; again, if on A's death intestate the land descends to B, and he also dies intestate, the descent is still traced from A, because B was not the purchaser, although he is the person from whom the land descends. If, however, there is a total failure of heirs of the purchaser, the descent is traced from the person last entitled to the land (Law of Property Amendment Act, 1859, s. 19).

The rules regulating the selection of the person to take by descent in a given case are divisible according to their source, and are of the following kinds:—

(I) Descent according to the common law means either literally the common law, or (more usually) the common law as altered by the Inheritance Act, 1833, s. 2. The rules regulating this kind of descent are called the canons of descent, and are as follows:—

(A) Descent of an estate in fee simple.

The estate now, under s. 1 of the Land Transfer Act, 1897, vests in the personal representative of the deceased owner, but (s. 2) such representative is merely a trustee for the persons beneficially entitled and must transfer

to such persons when required. The persons beneficially entitled are as follows:—

(1) Inheritances in the first place lineally descend to the issue of the purchaser, *in infinitum*, but the issue nearest in degree to the purchaser are preferred to the more remote; consequently the children of the purchaser are preferred to their own issue.

(2) The male issue is admitted before the female in the same degree; for instance, sons are admitted before daughters.

(3) Where two or more of the male issue are in equal degree of consanguinity to the purchaser, the eldest only shall inherit; but the females shall inherit all together.

(4) The lineal descendants of any person deceased shall represent him; that is, shall stand in the same place as the person himself would have done had he been living. Therefore, if the purchaser leaves a daughter, and a grandson by a deceased son, the grandson takes the land by right of representation, to the exclusion of the daughter. See PER CAPITA; PER STIRPES.

(5) On the failure of lineal descendants of the purchaser, the inheritance descends to his nearest lineal ancestor, or to the issue of such lineal ancestor, if he has died, according to the rule of representation (canon 4).

(6) The paternal line is preferred to the maternal. In other words, the father and all the male paternal ancestors of the purchaser and their descendants shall be admitted to inherit before any of the female paternal ancestors or their descendants; all the female paternal ancestors and their heirs before the mother or any of the maternal ancestors of the purchaser, or her or their descendants; and the mother and all the male maternal ancestors and their descendants before any of the female maternal ancestors or their descendants.

(7) A kinsman of the half-blood shall inherit next after a kinsman in the same degree of the whole-blood to the purchaser, and after the issue of such kinsman, when the common ancestor is a male, and next after the common ancestor, when such ancestor is a female. See BLOOD.

(8) In the admission of female ancestors, the mother of the more remote male (paternal or maternal) ancestor, and her heirs, shall be preferred to the mother of a less remote male (paternal or maternal) ancestor and her heirs.

(B) The descent of an estate tail follows the first four canons, unless it is barred, or unless it is limited to special heirs or to males or females, in which case the canons govern its descent so far as they are applicable. See TAIL; and *infra*.

(II) Customary descent is a descent regulated by the custom of the place where the land is situated, as in gavelkind and borough English land (q.v.); other peculiar kinds of descent occur in many manors.

A kind of descent which, before the enactment of the Land Transfer Act, 1897, was anomalous, takes place on the death of a mortgagee of land other than copyhold (Copyhold Act, 1894, s. 88), or on the death of a person who holds such land as sole trustee, in either of which cases the hereditament vests like a chattel real in the legal personal representative of the deceased mortgagee or trustee (Conveyancing and Law of Property Act, 1881, s. 30); and under s. 4 of the Conveyancing and Law of Property Act, 1881, where a person has died after the 31st December, 1881, leaving an uncompleted contract for the sale of land enforceable against his heir or devisee, his personal representatives have power to convey the land so as to give effect to the contract.

An equitable estate or interest descends in the same way as if it were legal. Thus an equity of redemption in fee simple land descends to the heirs of the mortgagor in the some way as the fee simple would have descended.

With reference to the nature and degree of the consanguinity, descent is said to be lineal when it takes place from an ancestor to a descendant (*e.g.*, from father to son) or *vice versâ*, and collateral or transversal when the parties are descended from a common ancestor, as in the case of uncle and nephew, cousin and cousin, etc. See ANCESTOR; CONSANGUINITY.

If an estate is limited to the heirs of the body of A, a deceased person who has left two sons, B and C, B takes by purchase as the first donee in tail, but nevertheless the estate devolves on his death as if he had taken it by descent from A, and, therefore, on B's death without issue the estate devolves on C as the heir of the body of A. This is called a descent *per formam doni* ("according to the form of the gift"), although it is in strictness neither a descent nor a purchase.

Before the Inheritance Act, 1833, there were several other kinds of descent, the most important of which were descent *ex parte paternâ* and *maternâ* (on the paternal or maternal side). If a person succeeded to land as heir to his mother and died intestate without issue, the land descended to his heir on

the mother's side, that is, to a descendant of one of his mother's ancestors. In all other cases land descended to the heirs *ex parte paternâ* of the person last seised. If a person who had acquired land as heir to his mother conveyed it to a third person and then took a reconveyance to himself, he was said to break the descent, because on his death intestate the land would descend to his heirs *ex parte paternâ*. See HEIR; HEREDITAMENT; INHERITANCE.

Descent Cast is the same as what the older writers called a "descent which tolls entry." Where a person who had acquired land by disseisin, abatement, or intrusion, died seised of the land, the descent of it to his heir took away or "tolled" the real owner's right of entry, so that he could only recover the land by an action. The doctrine of descent cast was abolished by the Real Property Limitation Act, 1833, s. 39. The term seems to have originally meant the happening of any descent, because the law used to "cast" the land upon the heir.

Deserted premises may be recovered by the landlord in a summary way before a magistrate or justice of the peace, if they were held at a rent of three-fourths at least of their yearly value and one half-year's rent is due and no sufficient distress has been left by the tenant (Distress for Rent Act, 1737, s. 16; Deserted Tenements Act, 1817).

Desertion is where a husband voluntarily and without reasonable cause leaves his wife against her wish, or similarly where the wife leaves her husband. Where one spouse is compelled to leave in consequence of the misconduct of the other, then the spouse guilty of such misconduct, and not the spouse who leaves, is the party who is guilty of desertion. Desertion for two years or upwards affords ground for an application for judicial separation (q.v.), and if coupled with one of certain other matrimonial offences, for dissolution of marriage (q.v.). Desertion by a husband for any time, however short, enables the wife to apply for a protection order (q.v.), or to apply to a court of summary jurisdiction under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, for an order giving her (s. 5) some or all of the following things: (*a*) a separation, which has the same effect as a judicial separation; (*b*) custody of children; (*c*) a weekly allowance not exceeding £2 payable by her husband. See RESTITUTION OF CONJUGAL RIGHTS; SEPARATION ORDER.

Designatio justiciariorum est à rege; jurisdictio vero ordinaria à lege (4 *Inst.* 74). (The appointment of justices [of the Court of King's Bench] is in the hands of the King; but their ordinary jurisdiction is given by the law.)

Designatio personæ. See PERSONA DESIGNATA.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum (*Co. Litt.* 210*a*). (To mention one thing is to exclude another; and when you mention a thing expressly, anything which you have not mentioned is out of the matter.)

Designs. The registration of designs, and copyright therein, is now regulated by the Patents and Designs Act, 1907, ss. 49-61, 91, 93, as amended by the Patents and Designs Act, 1919, more especially by ss. 14, 15, 19, and also as set out in the schedule to the latter Act.

"'Design' means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device" (Act of 1919, s. 19).

A person registered as the proprietor of a design has copyright in it for five years from the date of registration (Act of 1907, s. 53). See PUBLICATION; NOVELTY.

De similibus idem est judicium. (In like cases the decision is the same.) Compare IN CONSIMILI CASU, etc., and LEX BENEFICIALIS, etc.

De son tort. See EXECUTOR.

De son tort demesne. (Of his own wrong.) Here demesne (q.v.) is used in its primary sense of own or private. The words *de son tort demesne* were used in an appropriate case as part of the replication to the defendant's plea in the old action of trespass. Thus where B, the defendant, pleaded that what was alleged against him had been done by the order of C, his master, then A, the plaintiff, might reply that B had done it *de son tort demesne sans que C luy commande*, that is to say, of his own wrong without being ordered by C.

Destructio = VASTUM (q.v.). See EXILIUM.

Destructive Insects, etc. The Ministry of Agriculture and Fisheries (q.v.) has power to make orders for preventing the introduction and spreading of the Colorado Beetle (Destructive Insects Act, 1877), or of any insect, fungus or other pest destructive of agricultural

or horticultural crops, or to trees or bushes (Destructive Insects Act, 1907). Such powers of the Ministry under these Acts as relate only to forest trees and timber were transferred to the Forestry Commissioners by s. 3 (2) of the Forestry Act, 1919. See FORESTRY.

Detachiare. Anciently this meant to make a seizure of chattels under authority of the law.

Detainer. When a person was in arrest in a civil proceeding and another writ for his arrest was lodged with the sheriff or other officer before his discharge, it was executed by detaining him. This was called a detainer. Detainers disappeared when arrest (q.v.) on mesne process, that is to say, before a judgment had been recovered, was abolished by s. 1 (now repealed) of the Judgments Act, 1838. As to detainer of lands, see FORCIBLE DETAINER.

Detainer, Writ of. A writ authorising the detention of a man (already in custody for debt, etc.) upon a cause of action other than that upon which he had been arrested originally: see the Schedule to the statute 2 & 3 Will. 4, c. 39, now repealed by the Civil Procedure Acts Repeal Act, 1879.

Detaining Officer. An officer appointed by the Board of Trade to provisionally detain ships believed to be unsafe (Merchant Shipping Act, 1894, s. 459). See COURTS OF SURVEY.

De tallagio non concedendo. The statute 25 Edw. 1, which enacts that no tallage or aid shall be levied without the assent of archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land. The statute has always been relied on as an authority for the constitutional doctrine that there can be no taxation except by Parliament.

Determinable; Determination; Determine. An estate is said to determine when it comes to an end, whether by limitation, effluxion of time, merger, surrender or otherwise. When an estate is subject to a condition, defeasance, or the like, it is said to be determinable on the happening of the event specified in the condition. Thus an estate given to a woman during widowhood is determinable on her marrying again.

Detinue was the name of the action which, before 1875, was the remedy where a person claimed the specific return of goods wrongfully detained from him, or their value; as where A lent B a horse, and B refused to return it. The particular form of action known as detinue has been abolished since 1875; but an action in the ordinary form which is instituted for the specific return of goods unlawfully detained is still properly described as an action of detinue (R. S. C., App. C., s. vi., No. 2). See ACTIONS; DELIVERY, WRIT OF.

Deus solus hæredem facere potest non homo (*Co. Litt.* 7). (God alone, and not man, can make an heir.) No instrument or act in the law can make one an "heir," which signifies the person to whom realty descends by right of blood. See various maxims under HÆRES.

Devastavit ("he has wasted [the assets]") is the name given to any violation or neglect of duty by a personal representative which makes him personally responsible to persons having claims on the assets, *e.g.*, creditors and legatees. Thus if a personal representative applies the assets in satisfaction of a debt due by himself to a third person, or collusively sells the testator's goods at an undervalue, or pays claims which he is not bound to satisfy, he is guilty of a *devastavit*.

In ordinary cases the remedy for a *devastavit* is by proceedings to make him responsible or to administer the estate under the direction of the Court. See ADMINISTRATION; ACTION.

There is also a remedy in some cases by writ of *fi. fa. de bonis propriis*, and there was formerly also a remedy by the now obsolete *scire fieri* inquiry. See those titles.

Development. The Development and Road Improvement Funds Acts, 1909 and 1910, were passed in order to promote the development of the agricultural industry, forestry, drainage, transport, harbours, inland navigation and fisheries (Act of 1909, s. 1) through eight Development Commissioners, to be appointed by the Crown, who hold office for a period of ten years but who may be reappointed, one to retire every year, four to be a *quorum*, only two to be paid and such two to receive collectively not more than £3,000 a year (Act of 1909, s. 3; Act of 1910, s. 1).

Devenerunt. A writ (obsolete since the enactment of the statute 12 Car. 2, c. 24) which, on the death of the heir of a tenant *in capite*, under age, and in the wardship of the king, was issued to the escheator (q.v.) commanding him to enquire what lands and tenements came to the king by the death of the tenant. Compare DIEM CLAUSIT, etc.

Deviation, in the law of marine insurance, happens where there is a wilful and unnecessary departure from the due course of the voyage of a ship, for any, even the shortest, time. A deviation discharges the underwriters from liability in ordinary cases, but in some cases a deviation is justifiable, *e.g.*, for the purpose of saving life.

In the law of railways, a deviation is an alteration of the line of a railway. The Railways Clauses (Consolidation) Act, 1845, s. 15, authorises a company which is subject to its provisions to deviate laterally from the line marked on the deposited plans within the limits delineated thereon; s. 14 limits the deviations which are permitted in gradients, curves, tunnels, or other engineering works; and other deviations are dealt with in ss. 11, 12, and 13.

Device. Among the "marks" which may be registered under the Trade Marks Act, 1905, is a distinctive device (ss. 3, 9 (5)), which comes within s. 9 of the Act and is not excluded by s. 11. Colour may enter into the device (s. 10).

De Viris Religiosis. See MORTMAIN.

Devisavit vel non. Under the old Chancery practice, where an heir at law was a party to proceedings affecting the real estate of his ancestor under an alleged will, he was generally entitled to an issue *devisavit vel non*, that is, to have the question, whether his ancestor devised the lands or not, tried in a common law Court before a jury. The practice was in effect abolished by the statute 25 & 26 Vict. c. 42. See ESTABLISHMENT OF WILLS.

Devise; Devisee. A devise, though often used as meaning a legacy, is properly a gift of land or other realty by will, *e.g.*, "I devise Blackacre to A. for life and after his death to B."; this gives A. an estate for life and B. the fee simple (see ESTATE). A. and B. are called devisees.

A devise may be either specific (as in the above instance), or residuary, *e.g.*, "I devise the residue of my land and realty to C.," which gives C. all lapsed and undisposed-of real property belonging to the testator at his death (Wills Act, 1837, ss. 24, 25). But in some respects every residuary devise is in effect specific, for where the testator's personal estate is insufficient for the payment of his debts, the specific devisees must contribute towards their payment rateably with the residuary devisee, while in the case of personalty the debts are payable out of the residue in exoneration of the legacies. See ASSETS.

An executory devise is such a direct limitation by will of a contingent interest in land as would be void at common law if made by deed; executory devises are therefore opposed on the one hand to limitations allowed at common law (such as contingent remainders), and on the other hand to limitations by use (see USE), though they scarcely differ from the latter except in form. Thus if A. devises land to B. (a minor) and his heirs, but if he should die under twenty-one, then to C., this is an executory devise to C., the effect of which might also be produced by a shifting use, though not by a conveyance at common law, because no limitation over can follow the limitation of an estate in fee simple (see LIMITATION). Executory devises must not transgress the rule against perpetuities, or the provisions of the Thellusson Act (q.v.).

Devoir. Used in the statute 34 Edw. 3, c. 18, as meaning a customs duty.

Devonshiring = DENSHIRING (q.v.).

Dialogus de Scaccario. This is an account, given in the form of an imaginary dialogue, of the Exchequer as it existed in 1178. It is now generally held to have been written by Richard Fitzneale or Fitznigel, Bishop of London from 1189 to 1198, who, as Treasurer of the Exchequer from 1169 to 1189, was thoroughly acquainted with the subject of the dialogue. A copy of the dialogue is in Stubbs' *Select Charters* (8th ed.), at pp. 200-241.

Diamorphine. See DRUGS, DANGEROUS.

Dica. Used in the Red Book of the Exchequer as meaning a tally (q.v.) for accounts.

Dice. Games played with dice are treated as unlawful by the statute 13 Hen. 8, c. 9; and all games played with dice, except backgammon and similar games, are prohibited by the Gaming Acts, 1738, 1739 and 1744. The prohibition extends not merely to dice, but also to "any other instrument, engine or device in the nature of dice" (Act of 1739, s. 9). See GAMING; UNLAWFUL GAMES.

Dickar; Deckar. An ancient measure of leather, containing ten hides.

Dictum is an observation by a judge on a legal question suggested by a case before him, but not arising in such a manner as to require decision by him. It is therefore not binding as a precedent on other judges, although it may be entitled to more or less respect. "Dictum" is an abbreviation of *obiter dictum*, "a remark by the way."

In early times *dictum* meant the award of an arbitrator, who himself was known as the *dictor*.

Dictum de Kenilworth. (The award made between the king and his commons at Kenilworth.) This is printed (under this title) in the *Statutes of the Realm* as 51 & 52 Hen. 3. In the *Statutes at Large* (Vol. 9, App., p. 1), it is printed simply as the *Dictum de Kenilworth*. It was not in fact a statute: it was merely a declaration of the terms arranged between Edward I. (then Prince Edward) and

the barons who had been on the side of Simon de Montfort.

Diem clausit extremum (="he has died") is a special writ of *extendi facias*, or extent in chief, issuing after the death of the king's debtor, against his lands and chattels. It sets out with stating the death of the debtor, from whence it derives its name. See EXTENT.

Anciently a writ known by this name was issued upon the death of a tenant *in capite* commanding the escheator (q.v.) of the county to enquire of what lands such tenant had died possessed and who was the next heir. Compare DEVENERUNT; see MANDAMUS.

Dies amoris. In Coke's time this meant the fourth day of each term, that being the day upon which defendants could appear to writs. The fiction was that defendants were allowed only by the favour of the Court to appear at all.

Dies communes de banco. (General days in bank.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 208), s.v. *Statutes of Uncertain Date* and in the *Statutes at Large*, as 51 Hen. 3, st. 2.

Dies communes de dote. (General days in dower.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 208), s.v. *Statutes of Uncertain Date*, and in the *Statutes at Large* as 51 Hen. 3, st. 3.

Dies datus. (The day given.) It was the same thing as the *dies amoris* (q.v.).

Dies Dominicus non est juridicus (*Co. Litt.* 135). (The Lord's Day (Sunday) is not juridical); that is to say, it is not a day for legal proceedings. See SUNDAY.

Dies marchiæ. In the reign of Richard II. this meant a day every year on which the wardens of the English and Scotch marches or borders used to meet in order to adjust differences which had arisen, and to arrange for the continuance of peace between the two countries.

Dies non or **Dies non juridicus** is a day on which no legal business can be transacted. Such is Sunday, Christmas Day, Good Friday, etc. See VACATION.

Dieu et mon droit. (God and my right.) The motto used on the royal arms of England since the time of Richard I.

Dieu son act. Anciently this meant the act of God (q.v.).

Difforciare rectum. (To deny justice or to deny a man of his right.) Used by Mathew Paris in 1164.

Digamy. A second marriage contracted after the termination of the first marriage, as distinguished from bigamy (q.v.). The use of digamy as a synonym of bigamy is obsolete.

Digest. In jurisprudence, a digest properly means a collection of rules of law on concrete cases, as opposed to a code, which consists of abstract rules of law. In other words, a code lays down principles, while a digest gives examples of their application to certain combinations of facts. A digest may be either a legislative work (as the *Digest of Justinian*), or it may be the work of a private author. See CODE.

In English phraseology, "digest" sometimes means (i) a collection of headnotes of decided cases, arranged either alphabetically or systematically, of which Comyns's (see ABRIDGMENTS), and Mews' *Digests* are well-known examples; and sometimes (ii) a collection of principles or abstract rules of law, made by a private author, and which if promulgated by the Legislature would be called a code: such are the *Digests of the Criminal Law* and of the *Law of Evidence*, compiled by Mr. Justice Stephen.

Dignity. A dignity is the right to bear a title of nobility or honour. Some dignities, such as those of peers and baronets, are created either by writ or by letters patent; a knight bachelor is created by corporeal investiture. Dignities are either for life, such as knighthood or the peerages of Lords of Appeal in Ordinary (q.v.), or of inheritance, such as baronetcies and ordinary peerages. A dignity of inheritance may also exist by prescription. A dignity of inheritance is an incorporeal hereditament. It is generally limited either to the heir or the heirs of the body of the grantee, and follows the rules governing the ordinary descent of land. If, however, a man holds an earldom to him and the heirs of his body, and dies leaving only daughters, the dignity is in suspense or abeyance until the Crown declares which daughter shall hold it during her life. See ABEYANCE; OFFICE.

Dilapidations. In ecclesiastical law, an incumbent who incurs dilapidations, that is, allows the buildings of the benefice to fall into ruin, or pulls them down, or commits waste on the timber or lands of the benefice, is liable in the Ecclesiastical Courts to be punished for so doing and to be compelled to make good the injury. He and his personal representatives are also liable to an action at law by his successor in the benefice. (See WASTE.) As to the surveying of dilapidations, and as to loans to incumbents to enable them

to execute repairs, see the Ecclesiastical Dilapidations Acts, 1871 and 1872.

Dilatory. See PLEA.

Diligence is care. As to the effect of the absence of diligence, see BAILMENT; NEGLIGENCE.

Diligiatus. Outlawed. See Leg. Hen. 1, c. 45.

Dilligrout. Anciently this was a tenure in sergeanty (q.v.) under which the lands were held of the king by the service of providing dilligrout (a species of pottage) for the king's table at the coronation.

Dime. The same as disme (q.v.).

Diminution. Formerly, where a record in a proceeding was ordered to be sent or certified by an inferior to a superior Court for the purpose of review, and the record was not completely or truly certified, the party injured thereby might allege a diminution of the record (*i.e.*, its incompleteness), and a *certiorari* was awarded.

Dimisorry Letters. Where a candidate for Holy orders has a title of ordination in one diocese and is to be ordained in another, the bishop of the former diocese gives letters dimissory to the bishop of the latter to enable him to ordain the candidate. See TITLE.

Diocesan Courts. These are ecclesiastical Courts taking cognizance of all matters arising within the diocese of each bishop. They consist of the Consistorial Court (q.v.); the Courts of one or more commissaries (q.v.); and the Courts of Archdeacons, exercising general or limited jurisdictions, according to the terms of their patents, or to local custom, or to the authority of statute. See PROVINCIAL COURTS.

Diocese is a district subject to a bishop's jurisdiction, and is divided into archdeaconries (q.v.). See BISHOPRIC; PROVINCE.

Diplomatic Privilege. See AMBASSADOR.

Direction. When an action is tried before a jury, and a question of law arises on which the verdict of the jury partly depends, the judge directs them on the subject, that is, tells them what the law is, and they find accordingly. If the judge directs them erroneously, this is a misdirection, and may be a ground for granting a new trial. (See TRIAL.) When money is to be paid into or out of Court or securities, etc., are to be delivered out of Court, the Paymaster-General upon receipt of an order made out in accordance with r. 23 of the Supreme Court Funds Rules, 1915, prepares what is known as a direction giving effect to the order (r. 47), such direction to be in the form prescribed by the Treasury (r. 103), and to be sufficient authority for a bank or other company to act thereon (r. 49).

Directions, Summons for. In every action in the Supreme Court other than an Admiralty action, or an action in which the writ is specially endorsed under Ord. 3, r. 6, or proceedings commenced by originating summons, the plaintiff, within fourteen days after appearance by the defendant must take out a summons for directions (Ord. 30, rr. 1, 8), upon the hearing of which such order as may be just is made with respect to the proceedings in the action, and particularly with respect to pleading, particulars, admissions, discovery, interrogatories, inspection of documents, etc., commissions, examination of witnesses, place and mode of trial (r. 2). The object of the summons for direction is to replace by one comprehensive application a multiplicity of applications as to the several matters mentioned in r. 2.

Director of a company is a person elected by the shareholders or otherwise appointed to superintend the management of the company's affairs. There are usually several directors, with power for a certain number of them to act without the others. See QUORUM. The directors are the agents of the company, and it is bound by all acts done by them within the scope of their authority. They are not trustees in the proper sense of the word. See TRUSTEE; also COMPANY; QUALIFICATION; ARTICLES OF ASSOCIATION.

Director of Public Prosecutions. By the Prosecution of Offences Act, 1879, provision was made for the appointment of an officer called the Director of Public Prosecutions, whose duty it is, subject to the superintendence of the Attorney-General, to institute, undertake, carry on or give advice or assistance in criminal proceedings which appear to be of importance or difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution, appear to render the action of the Director necessary to secure the due prosecution of an offender. By the Prosecution of Offences Act, 1884, the Solicitor of the Treasury (q.v.) was made Director of Public Prosecutions, but this enactment was repealed by the Prosecution of Offences Act, 1908, s. 1 (1), and the Director of Public Prosecutions now exists again as he did under the Act of 1879. He must be a barrister or solicitor of ten years' standing (Act of 1908, s. 1 (4)). Such number of assistant directors as are required may be appointed (*ib.*, s. 1 (1)). An assistant director

must be a barrister or solicitor of seven years' standing (*ib.*, s. 1 (4)).

Directory. A provision in an Act of Parliament, rule of procedure, or the like, is said to be directory when it is to be considered as a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative provision, which must be followed. The general rule is that the provisions of a statute relating to the performance of a public duty are so far directory that, though neglect of them may be punishable, yet it does not affect the validity of the acts done under them; as in the case of a statute requiring an officer to prepare and deliver a document to another officer on or before a certain day.

Diriment Impediments. Those bars to a marriage which make it void *ab initio*.

Disability is the absence of legal ability to do certain acts or enjoy certain benefits; such as the disability to sue, to take lands by descent, to enter into contracts, to alien property, etc.

Disability is called general when it disables the person from doing all acts of a given kind, or special when it disables him from doing a specific act. Examples of general disability occur in the case of outlaws and convicts, who cannot bring any action or suit in their own right, and lunatics and infants, who cannot alien property or enter into contracts except for necessaries. The disabilities of married women have been greatly modified by the Married Women's Property Acts (q.v.). A special disability occurs where a person who has entered into a contract becomes incapable of performing it. Such a disability generally arises by act of the party; as where a person who has contracted to marry a woman marries another, and thereby disables himself from performing his promise.

As a rule "disability" means a general disability, especially a disability to sue. Disabilities of this kind are of importance with reference to the Statutes of Limitation and the Prescription Act, 1833 (q.v.), which allow persons under certain disabilities an extended time within which to enforce their rights.

Disabilities are either personal or absolute. A personal disability is one which is confined to a certain person, such as that of an infant, married woman, etc. An absolute or perpetual disability is that which not only attaches to the person disabled, but also to his descendants or successors. Thus formerly where a person was attainted of treason or felony, that was an absolute and perpetual disability by corruption of blood for any of his posterity to claim any inheritance in fee-simple, either as heir to him or to any ancestor above him. But this rule as to attainder has been abolished except in the case of lineal descent from persons outlawed (Inheritance Act, 1833, s. 10; Forfeiture Act, 1870, s. 1); and outlawry is now practically obsolete.

Disability is also used in the special sense of disability to enter into the contract of marriage. This may be either canonical (such as the natural inability at the time of marriage to consummate the marriage) or civil. A canonical disability makes the marriage voidable, while a civil disability (except that for want of age) makes it void. Examples of civil disabilities are: (1) a prior and existing marriage of one of the parties; (2) want of reason; (3) consanguinity or affinity within the prohibited degrees; (4) want of age, viz., the fact that the male is under fourteen or the female under twelve.

Disable. In its ordinary sense, to disable is to cause a disability (q.v.).

In the old language of pleading, to disable was to take advantage of one's own or another's disability; thus, according to Coke, it was "an express maxim of the common law that the party shall not disable himself;" but "this disability to disable himself . . . is personal."

Disabling. A disabling statute is one which restricts a pre-existing right. Thus the statute 13 Eliz. c. 10, deprived corporations of their power to lease their lands for any term however long, and restricted them to leases for not more than twenty-one years.

Disadvocare. Anciently this meant to deny, or not to acknowledge, a thing.

Disafforest. To deprive land of the character of forest (q.v.). In mediæval times disafforested lands were known as *purlieus* and remained subject to certain rights, known as forestal rights, of the Crown. Now when any land is disafforested the disafforesting Act of Parliament goes on to enact that all forestal rights in respect of it shall cease.

Disappropriation is where the appropriation of a benefice is severed, either by the patron presenting a clerk, or by the corporation which has the appropriation being dissolved. See APPROPRIATION.

Disbar. When a barrister is expelled from his Inn for misconduct, he is said to be disbarred. The effect of such expulsion is that he ceases to be a barrister. A barrister may also be disbarred upon his own application if he, for instance, desires to become a solicitor:

and in such case, of course, no discredit attaches to the disbarring.

Discharge. To discharge a right or obligation is to deprive it of its binding force, and to discharge a person is to release him from an obligation; thus payment discharges a debt, and in the case of a guarantie, an alteration of the contract, without the consent of the surety, will in general discharge him. Discharge is a generic term; its principal species are rescission, release, accord and satisfaction, performance, judgment, composition, bankruptcy, merger (q.v.).

Discharge by operation of law is where the discharge takes place whether it was intended by the parties or not: thus if a creditor appoints his debtor his executor, and the debtor acts as executor, the debt is discharged by operation of law, because the executor cannot have an action against himself; but in equity the debtor is bound to account for the debt as part of the assets of the testator unless the circumstances are such as to indicate that the testator intended to forgive the debt.

In the law of bankruptcy, a discharge is the proceeding by which a person who has been adjudicated a bankrupt is freed from all his debts provable in the bankruptcy, with a few exceptions (as to which see s. 28 of the Bankruptcy Act, 1914), and is also enabled to acquire property without its vesting in the trustee. As to the grant, conditional grant, suspension or refusal of the discharge, see the Bankruptcy Act, 1914, ss. 26, 27.

To discharge the order of a Court or judge is to set it aside, on an application made for that purpose, either to the Court in which the order was made, or to a Court of Appeal. An order *nisi* is said to be discharged where the Court refuses to make it absolute. See Absolute; Nisi.

At the trial of an action in the High Court, it sometimes becomes necessary to dispense with the further services of the jury, either on account of the sudden illness of a juryman, or because they cannot agree; in either of which cases it is now the practice to discharge them. The judge has a like power in a criminal case. In no case is a discharge a bar to a further trial.

A prisoner or defendant is discharged from arrest or imprisonment when he is set at liberty.

Disclaim; Disclaimer. To disclaim a right, interest or office is to expressly renounce all claim to it or refuse to accept it. Thus where property is conveyed to a person upon certain trusts, he may disclaim the trust unless he has accepted the office or has acted as trustee. The act of disclaiming is called a disclaimer, and is generally evidenced by a deed. See Renunciation.

In the law of landlord and tenant a disclaimer is such act by the tenant as amounts in law to a repudiation of the relation of landlord and tenant. Notice to quit given by the tenant is the most ordinary instance: but there may also be a disclaimer where the tenant sets up title for himself, as by claiming possession of the title-deeds, or for some third party as by attorning to such third party.

Where a person has obtained a patent for an invention of which the title is inconsistent with the specification, or of which a part is neither new nor useful, the patent is in strictness void; but by the Patents and Designs Act, 1907, s. 21, a patentee is in such a case empowered, with the leave of the comptroller, to enter a disclaimer of any part of the specification, and the disclaimer is then deemed to be part of the letters patent or specification, so as to render them valid for the future. As to amendment of a specification by way of a disclaimer in proceedings before the Court, see s. 22. See Memorandum of Alteration.

As to amendment, by disclaimer, of the register of trade-marks, see the Trade Marks Act, 1905, s. 32.

Where any property of a bankrupt consists of land burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of property which is not saleable by reason of its binding the possessor to the performance of any onerous act or to the payment of any sum of money, the trustee in the bankruptcy may sign a disclaimer of the property, which has the effect of determining the contract, surrendering the lease, forfeiting the shares, or determining the estate and interest of the bankrupt, according to the nature of the property (Bankruptcy Act, 1914, s. 54), but a disclaimer of a lease cannot be made without the leave of the Court except in the cases specified in r. 276 of the Bankruptcy Rules, 1915 (*ib.*).

Under the practice of the Court of Chancery before the Judicature Acts, if a bill claiming relief was filed against a person who had no interest in the subject-matter of the suit, his proper course was to file a disclaimer, alleging that he had not any right or title, and that he did not and never did claim any title to the subject-matter of the suit. In such a case the plaintiff generally had his bill dismissed as against that defendant.

Disclosure. When partners sue out a writ

in the name of their firm, they or their solicitors must, on demand in writing by or on behalf of the defendant, furnish the names and addresses of the partners (Ord. 48a, r. 2). Any party to an action may apply by summons to a judge for a statement of the names and addresses of all persons who are partners in any firm which is a party in the action (*ib.*, r. 1).

Discontinuance. In the procedure of the High Court discontinuance is where the plaintiff in an action voluntarily puts an end to it, either by giving notice in writing to the defendant before any step has been taken in the action subsequent to the statement of defence, or at any other time by order of the Court or a judge (R.S.C., Ord. 26, r. 1). The effect of discontinuance is that the plaintiff has to pay the defendant's costs, but may commence another action for the same cause (*ib.*). (See WITHDRAWAL.) If the defendant has put in a counter-claim it may be proceeded with notwithstanding the discontinuance (Ord. 21, r. 16). A defendant may by leave of the Court discontinue any counter-claim set up by him (Ord. 26, r. 1).

In the County Court discontinuance is governed by Ord. 9 of the County Court Rules.

See MISCONTINUANCE as to the old discontinuance.

Formerly, in the law of real property, discontinuance was where a man wrongfully aliened certain lands or tenements and died, whereby the person entitled to them was deprived of his right of entry and was compelled to bring an action to recover them. The term was specially applied to alienations by husbands seised *jure uxoris*, by ecclesiastics seised *jure ecclesiæ*, and by tenants in tail: thus, if a tenant in tail aliened the land and died leaving issue, the issue could not enter on the land but was compelled to bring an action. The principal actions appropriate to discontinuances were: formedon, *cui in vitâ*, *cui ante divortium*. See those titles. The effect of discontinuance is taken away by the Real Property Limitation Act, 1833, s. 39. See RECONTINUANCE; WITHDRAWAL.

Discovert. A woman is said to be *discovert* when she is either a spinster or a widow. See COVERT.

Discovery. Discovery is where one party to an action or suit obtains from another party information on oath. It is of two kinds—(i) discovery, by interrogatories, of facts relevant to the issue in the action, and within the knowledge of the party interrogated; and (ii) discovery of documents relating to the matters in question in the action, and in the possession of the party. The object of the former proceeding is partly to obtain information on subjects of which the interrogating party is ignorant or misinformed, and partly to obtain admissions so as to save the necessity of proving certain facts. For this purpose, the interrogating party delivers to the opposite party interrogatories (q.v.), to which the latter is bound to file his answer on oath. (See ANSWER.) For the purpose of obtaining discovery of documents, the party seeking it issues a summons, asking that the other party may be ordered to make an affidavit stating whether he has or has had in his possession any and what documents relating to the matters in question in the action (R. S. C., Ord. 31, r. 12). The proceeding is merely a preliminary to the more important one of production or inspection (q.v.), and see AFFIDAVIT; PRIVILEGE; CONFIDENTIAL COMMUNICATIONS.

Discovery in the County Court is governed by rules practically identical with those of the High Court. See the County Court Rules, Ord. 16.

Sometimes an action is brought against a person for the sole purpose of obtaining information to enable the plaintiff to take proceedings against some other person: such an action is called an action for discovery, as opposed to an action in which relief is sought against the defendant. But such an action is now very unusual: for under s. 24 (7) of the Judicature Act, 1873, the Court can give in any action all such discovery as could have been obtained before that Act by a separate action for discovery.

Discredit. To discredit a witness is to throw doubts on the correctness of a statement made by him in giving evidence, either—(i) by giving evidence of his general bad character for veracity, or by cross-examining him on the subject (see CHARACTER); (ii) by showing that he has on former occasions made statements inconsistent with the evidence he has given relevant to the cause; (iii) by proving misconduct connected with the proceedings, *e.g.*, his having been bribed by one of the parties.

A party cross-examining an opponent's witness may use any of these modes. A party examining his own witness cannot as a rule discredit him, except collaterally, that is, by adducing evidence to show that the evidence he gave was untrue in fact. But if a witness prove adverse, that is to say hostile, the party calling him may, with the permission of the

judge, use the second mode of discrediting above mentioned. See WITNESS.

Discretio est discernere per legem quid sit justum (10 *Rep.* 140). (Discretion is to know through law what is just.) "Discretion, when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular." (Lord Mansfield, 2 *Burr.* 25, 39.)

Discretion; Discretionary. Discretion is a man's own judgment as to what is best in a given case, as opposed to a rule governing all cases of a certain kind. Thus a trustee often has a discretion given him by the settlor as to the management or application of the trust property. So a judge or Court often has a discretion in making orders or imposing conditions on litigants, *e.g.*, as to payment of costs, relaxing rules of practice, etc. Discretion, however, says Coke, is "to discerne by the right line of law, and not by the crooked cord of private opinion, which the vulgar call discretion"; and, therefore, if a judge proceeds on a wrong principle in a matter within his discretion, his order may be set aside by a Court of Appeal, and if a trustee acts fraudulently or negligently, the possession of a discretionary power will not protect him. See also DELEGATION; POWER; TRUST.

Disentailing Deed is an assurance by which a tenant in tail bars his estate tail so as to convert it into an estate in fee, either absolute or base. Under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), by which this mode of barring entails was introduced, every tenant in tail (other than a tenant in tail of lands granted by the Crown for services where the reversion is in the Crown, or a tenant in tail after possibility of issue extinct) may dispose of the land for an estate in fee simple absolute, so as to defeat the rights of all persons claiming under and after him: provided (i) that the disposition, in the case of freehold land, is by deed enrolled in the High Court of Justice, or if the land is copyhold, by surrender enrolled on the court rolls of the manor, unless the estate tail is equitable when it may be barred either by surrende. or by deed enrolled; and (ii) that if there is a protector under the instrument creating the entail, no disposition made without his consent by the tenant in tail bars the persons entitled in remainder or reversion expectant on the determination of the estate tail. An ordinary disentailing deed consists of a conveyance of the land by the tenant in tail to a nominee to such uses as the tenant in tail shall appoint, and in default of appointment to the use of him and his heirs. See ENROLMENT; SURRENDER; PROTECTOR; FEE.

Disforest. See DISAFFOREST.

Disgavel. To convert gavelkind (q.v.) land into ordinary freehold land. Several private Acts have been passed disgavelling land in Kent.

Dishonour. See BILL OF EXCHANGE; HONOUR.

Dismes; Decimæ. The same as tithes (q.v.). In the statute 25 Edw. 3, st. 7, *disme* is used as meaning the tax known as tenths (q.v.).

Dismissal of Action. If the plaintiff in an action does not deliver his statement of claim within the time during which he is bound to do so (R. S. C., Ord. 27, r. 1), or does not take out a summons for directions (q.v.) within the prescribed time (Ord. 30, r. 8), or does not set down the action for trial within the proper time (Ord. 36, r. 12), the defendant may apply to the Court or a judge to dismiss the action for want of prosecution. The defendant may also take this step if the plaintiff fails to comply with an order to answer interrogatories or produce documents (Ord. 31, r. 21); and the defendant, if he makes a like default, may have his defence, if any, struck out by order of the Court or a judge (*ib.*).

Dismissal of an action (under Ord. 36, r. 12) in consequence of the non-appearance of the plaintiff at the trial has the same effect as a dismissal on the merits, that is to say, after a hearing of the case, and so also has the dismissal of an action on a point of law under Ord. 25, rr. 2, 3. The effect of a dismissal on the merits is that the action cannot be brought on again.

Disorderly House is any common (i e., public) bawdy house, common gaming or betting house, or disorderly place of entertainment. It is a common nuisance, and therefore a misdemeanour at common law, to keep a disorderly house: but prosecutions in respect of any such places are usually under statute. See BETTING HOUSE; BROTHEL; GAMING HOUSE.

Disparage; Disparagement. As to disparaging statements, see DEFAMATION.

Under the law down to 1660, if a tenant of land held by knight's service died leaving an infant heir, the lord of whom the land was held was entitled to the marriage of the heir, that is, to bestow him or her in marriage. (See MARRIAGE.) It was necessary, however, that the proposed marriage should be without disparagement, that is, suitable to the heir; otherwise the heir was said to be disparaged.

Disparagements were of several kinds, of which the principal were: *propter vitium animi*, as where the proposed wife or husband was an idiot, etc.; *propter vitium sanguinis* (as in the case of villeins, "men of trade," etc.), and *propter vitium corporis*, by reason of some bodily defect.

Dispauper. A person who has been admitted to sue *in formâ pauperis* (q.v.) is said to be dispaupered when that privilege is withdrawn: as where it appears that he has means.

Dispensing Power. Under the Tudors and Stuarts the right of the Crown to dispense with (that is to say, to exempt from) the statute law was recognised by the Courts, subject, however, to the reservation that the Crown, while empowered to make lawful a mere *malum prohibitum*, could not legalise a thing *malum in se* nor grant a dispensation injurious to any subject. The dispensing power was ended by the Bill of Rights (q.v.), which, however, did not do more than declare that the dispensing power "as of late exercised" was illegal.

Disposition of Owner of Two Tenements. See EASEMENT.

Dissection. See ANATOMY.

Disseisin, says Coke, "is the wrongful putting out of him that is actually seised of a freehold"; in other words, the act of wrongfully depriving a person of the seisin of land, rents, or other hereditaments, as where a man not having a right of entry on certain lands or tenements enters into them and ousts him who has the freehold. In the case of land, the disseised person has both a right of entry and a right of action (q.v. and DESCENT CAST). In the case of incorporeal hereditaments, as the disseisin could only be by election (*infra*), the disseised person might either have an action for the disseisin, or avail himself of any other remedy which the law gave him (*e.g.*, in the case of rent, distraint).

Equitable disseisin is where a person is wrongfully deprived of the equitable seisin of land, *e.g.* of the rents and profits.

Disseisin by election was where a person alleged or admitted himself to be disseised when he had not really been so. In former days this was done by persons in order to avail themselves of the writ of assize of novel disseisin, which was a convenient remedy available only by those who had been disseised of land. Since the abolition of forms of action, the distinction between disseisin and other modes of wrongful dispossession of land is no longer of practical importance. Disseisin of incorporeal hereditaments cannot be an actual dispossession, being in general nothing more than a disturbance of the owner in the means of coming at or enjoying them. Disseisin of an incorporeal hereditament therefore only took place at the election of the party injured, for the sake of more easily trying the right. As the remedy for a disseisin has now no advantages over other kinds of actions, disseisin by election has become obsolete.

See ABATEMENT OF FREEHOLD; DEFORCEMENT; DISTURBANCE; FRESH DISSEISIN; INTRUSION; POSSESSION; RE-DISSEISIN; SEISIN.

Disseisor; Disseisoress; Disseisee. These words mean respectively a man who unlawfully puts another out of possession of land, a woman who does the same thing, and the person who is so put out of possession.

Dissenter. See NON-CONFORMIST; RECUSANT.

Dissolution. This is the act of putting an end to a legal relation. In the case of a partnership, dissolution takes place either by operation of law (*e.g.* in ordinary cases on the death or bankruptcy of one of the partners), by agreement between the partners, by effluxion of time, or by the order of a Court in proceedings taken for the purpose (see WINDING-UP and Partnership Act, 1890, ss. 32-35). A state of things which entitles a partner to obtain an order of dissolution is called a ground of dissolution: such is the insanity, incapacity or misconduct of one of the partners, the hopeless state of the business, or any other state of things which makes it impossible to continue the partnership (*ib.* s. 35). In the case of a company incorporated under the Companies Acts, dissolution takes place when its affairs have been completely wound up and certain formalities have been gone through (Companies (Consolidation) Act, 1908, ss. 172, 195 (3) (4)), or where a company has ceased to carry on its business or operations (*ib.* s. 242). A Friendly, Industrial or Provident Society is dissolved by an instrument of dissolution setting forth the liabilities and assets of the society, signed by a certain majority of the members and registered (Friendly Societies Act, 1896, ss. 78 (1) (*a*) (*b*) (*c*), 79; Industrial and Provident Societies Act, 1893, ss. 58 (*b*), 61). A Friendly Society may also be dissolved by the award of the registrar (Friendly Societies Acts, 1896, s. 80, and 1908, s. 8). An Industrial or Provident Society may be wound up in practically the same way as if it were a company registered

under the Companies Acts (Industrial and Provident Societies Act, 1893, s. 58 (*a*)).

A Building Society, whether incorporated or unincorporated, may be brought to an end by a winding up under the Companies (Consolidation) Act, 1908, or, if it is a terminating society, by termination; an incorporated society may be dissolved (1) in manner prescribed by the rules, or (2) under an instrument of dissolution, or (3) under an award of the Registrar of Building Societies.

Other corporations may be dissolved in various ways, *e.g.* by surrender or forfeiture of a charter, etc.

The High Court, on proceedings taken in the Probate, Divorce and Admiralty Division (q.v.) (and in certain cases (see DIVORCE COURT) at assizes), has power to decree the dissolution of a marriage on the petition of the husband alleging adultery by the wife, or on the petition of the wife alleging that the husband has been guilty of certain sexual offences punishable on conviction on indictment, or of incestuous adultery, or of adultery coupled with cruelty, or of adultery coupled either with desertion for two years or with such desertion as under s. 5 of the Matrimonial Causes Act, 1884, is deemed to have taken place by reason of non-compliance with an order for the restitution of conjugal rights (q.v.) (Matrimonial Causes Acts, 1857, s. 27; 1884, s. 5). (See ADULTERY; CRUELTY; DESERTION; DIVORCE; JUDICIAL SEPARATION.) A divorce of a foreign Court dissolving an English marriage—that is, a marriage celebrated in England—will be recognised by the English Courts: (*a*) if it was pronounced for grounds on which the marriage was liable to be dissolved in England; or (*b*) if the husband was at the time of the marriage domiciled in the foreign country. See DOMICILE; JUDGMENT.

As to the dissolution of Parliament, see PROROGATION.

Distinguenda sunt tempora (1 *Rep.* 24). (Times are to be distinguished.) This was said in connection with the question whether the statute 25 Hen. 8, passed in 1533, applied to facts before the Exchequer in 1592; and it meant that the circumstances of the two periods were to be taken into consideration.

Distinguished Service Order, The. Founded in 1886 to reward distinguished services in action of commissioned officers in the military (now including air) or naval service of the Crown. It consists only of Companions (D.S.O.) who rank next after C.V.O.s officially; but, as a matter of fact, the D.S.O. is a distinction which is coveted much more than is the C.V.O. (q.v.).

Distrain; Distrein. To distrain, or, to use the old spelling, distrein, is to seize goods by way of distress (q.v.).

Distress is the act of taking moveable property out of the possession of a wrongdoer, to compel the performance of an obligation, or to procure satisfaction for a wrong committed. An ordinary distress is effected by seizing the goods and placing them in a pound (q.v.). Some goods are privileged or exempted from distress, such as things in personal use or occupation at the time, instruments of husbandry, and trade fixtures, things in the possession of a trader but belonging to his customers, things in the custody of the law (*e.g.* goods seized under an execution), and things the property of a lodger (q.v.).

"Distress" also signifies the property distrained.

With reference to its origin, the right to distrain is either given by common law, or by statute, or created by reservation or agreement between the parties.

The principal kind of distress given by law is that used to compel payment of rent in arrear, especially by a landlord against his tenant. A right of distress (not often exercised) is given to every feudal lord (*e.g.* the lord of a manor) to compel his tenants to perform their services. A right of distress also formerly existed to enforce payment of amercements (q.v.) in certain cases. "Another injury for which distresses may be taken, is where a man finds beasts of a stranger wandering in his grounds, *damage feasant*, that is, doing him hurt or damage, by treading down his grass or the like, in which case the owner of the soil may distrein them till satisfaction be made him for the injury he has thereby sustained," says Blackstone. See POUND.

No distress can be made on an agricultural holding for rent which accrued due, or according to the course of dealing between the parties was payable, more than one year before distraining (Agricultural Holdings Act, 1908, s. 28); and agisted stock may be distrained only in the absence of other sufficient distress and then may be redeemed by the owner paying such amount, if any, as is due under the agistment agreement (*ib.* s. 29).

A statutory or statute-distress is given as a remedy for several duties and penalties imposed by special Acts of Parliament, such as assessments made by commissioners of

sewers, or for the relief of the poor. See WARRANT.

A remedy by distress, analogous to the ordinary distress for rent, is sometimes created by agreement between the parties to secure the performance of an obligation: thus an annuity deed may include a conveyance of land to a trustee, with a power of distress whenever the annuity is in arrear. See GRAND DISTRESS.

With reference to the extent of the remedy, distresses are of three kinds. Formerly every distress was a mere pledge or security, and this is still so in the case of distress of cattle *damage feasant*, distress for services, etc., which merely entitle the distrainor to retain the property until satisfaction is made. (See LIEN.) Where the distress is for fealty or suit of Court, or against defendants convicted of nuisance in not repairing highways, etc., and in other cases where it is the only remedy and merely gives the right of detaining the goods, it is called a distress infinite, because it has no bounds with regard to its quantity and may be repeated from time to time, until the stubbornness of the party is conquered. In the case of distress for rent, for a Crown debt and some other cases, if the amount is not paid within a certain time the distrainor may sell the property distrained and satisfy the debt out of the proceeds.

Distress is an extra-judicial remedy. See REMEDY.

See REPLEVIN; RESCUE; LEVANT AND COUCHANT; GRAND DISTRESS; RENT.

Distress Committee. A body constituted under the Unemployed Workmen Act, 1905, s. 1, for each metropolitan borough, and, under s. 2 of the same Act, for every municipal borough or urban district with a population of 50,000, "with a view to the provision of employment or assistance for unemployed workmen in proper cases." See CENTRAL BODY.

Distribution. By the Statute of Distribution (22 & 23 Car. 2, c. 10), when the administrator of a deceased intestate has paid the expenses, debts, etc., he is directed to make "just and equal distribution of what remaineth clear amongst the wife and children or children's children, if any such be, or otherwise to the next of kindred to the dead person in equal degree," according to the rules contained in the statute; namely, if there is a widow and children, one-third is to go to the wife and the rest to the children in equal shares; if there are no children, then one-half is to go to the wife and the other half to the next of kin; and if there is no wife, then the whole property is divided amongst the children or next of kin. Under the Intestates Estates Act, 1890, if the intestate dies without issue, the widow gets the whole of his real and personal estates if they do not exceed £500 in value or, if they exceed that value, £500 in addition to the share to which she is otherwise entitled.

Formerly, local customs of distribution prevailed in certain places (*e.g.* the City of London), but they were abolished by the statute 19 & 20 Vict. c. 94. See CUSTOM OF LONDON.

See BLOOD; DEAD MAN'S PART; NEXT OF KIN; REPRESENTATION; PER CAPITA.

District Boards. These were boards constituted under the Metropolis Management Act, 1855, ss. 31-41, for the management of the sanitary affairs of groups of such London parishes as were formed into districts. Their powers, as also the similar powers of the vestries of single parishes which were not included in any district under the Act of 1855, were transferred by the London Government Act, 1899, to the present metropolitan boroughs. See SEWER.

The district boards at present existing are the boards elected under the Poor Law Amendment Act, 1844, s. 42, for the administration of the school districts (as regards the management of any class of infant poor not over the age of sixteen chargeable to the areas forming the districts) which may be constituted under s. 40 of that Act. See also the Poor Law Act, 1903.

District Council. District councils are divided into urban district councils and rural district councils. These designations were created by the Local Government Act, 1894. That Act, by ss. 21 (1), 84 (1), 85 (5), gave, except in boroughs, the name of urban district council to the body which up to then had been the urban sanitary authority; but in boroughs the name of the corporation and council remain unchanged, and the powers and duties of an urban district council are exercised by them. The Act, by s. 24, created and gave the name of rural district council to the bodies which under s. 25 are the sole sanitary authorities and the chief highway authorities of the districts which (s. 21 (2)) before the passing of the Act had been known as rural sanitary districts.

Districtione Scaccarii, De. The statute given as 51 Hen. 3, s. 4, in the *Statutes at Large*, which provides "What distress may

be taken for the King's debts and how it shall be used."

District Parish. A parish may be divided into two or more district parishes by an Order in Council issued under the Church Building Act, 1818, in order to give effect, with the consent of the bishop of the diocese, to a scheme of the Church Building Commissioners. Such a scheme is prepared when a parish of large area has become so thickly populated as to become unworkable as a single parish. The church of a district parish is a parish church for all ecclesiastical purposes, except that it is only a perpetual curacy.

District Registries. By the Judicature Act, 1873, s. 60, provision is made for the establishment of district registries of the High Court of Justice, and for the appointment of district registrars: and under the Judicature Act, 1875, s. 13, two registrars may be appointed for the one district registry. District registries have accordingly been established in the principal country towns of England and Wales. The present number is eighty-nine. The limits of a district registry are in general conterminous with those of the County Court of the town in which the registry is situated; about three district registries each cover the whole of two County Court districts; and about five cover areas which are conterminous with no County Court district or districts. Only about one-sixth of England and Wales is within the limits of any district registry. Thus there is no district registry in, for instance, Cornwall.

An action in the High Court proceeds in a district registry when the plaintiff has issued the writ in that registry and all the defendants have appeared there, unless (Judicature Act, 1873, s. 65; Ord. 35, rr. 13-16) it is removed into the High Court. A defendant is only bound to appear in a district registry if he either resides or carries on business in the district (R. S. C., Ord. 12, r. 4); otherwise he has the option of appearing in London (Ord. 12, r. 5). When an action proceeds in a district registry, all the proceedings in the action down to and including final judgment, and the subsequent proceedings necessary to enforce it (including the issue of writs of execution, garnishee and charging orders) are taken in the district registry (Judicature Act, 1873, s. 64). The trial or hearing of the action must, unless where the rules otherwise provide, take place in the same way as if the action had been instituted in London, that is, before a judge of the High Court in London or at the assizes, with or without a jury, according to the practice applicable to the particular case (Ord. 35, r. 1). The district registrar may enter judgment or make an order for an account under Order 15 either by consent of the parties or by reason of the defendant's default (Ord. 35, r. 1).

The district registrar exercises most of the functions of a judge at chambers (Ord. 35, r. 6); an appeal lies from him to a judge of the High Court sitting in chambers (*ib.* r. 9).

The district registries are therefore in effect local branches of the Central Office and Judges' Chambers of the High Court, and are under the control of the Court accordingly (Ord. 35, r. 11). For more detailed information, reference should be made to the Judicature Act, 1873, ss. 60-66 and to R. S. C., Ord. 35, generally.

There are district registries of the Probate Division of the High Court in over fifty provincial towns: application for a grant of probate or letters of administration can be made at a district registry if the deceased had resided in the district allotted thereto (Court of Probate Act, 1857, s. 46, Sch. A.: see also s. 48, and the Court of Probate Act, 1858, s. 20).

Distringas is a writ so called from its commanding the sheriff to distrain on a person for a certain purpose. The old *distringas* to compel appearance on the civil side, the *distringas juratores*, and several other varieties of the writ, were abolished by the Common Law Procedure Act, 1852

Distringas to enforce appearance to an indictment, information or inquisition in the King's Bench Division is however still available under the Crown Office Rules, 1906. See Rule 85 as to its issue on the non-appearance of a defendant generally, and Rule 87 as to its issue, whether merely as a writ of *distringas* or as *alias* and *pluries* writs of *distringas*, on the non-appearance as defendants of bodies corporate or inhabitants of a given place.

Rule 89 of the Crown Office Rules, 1906, provides for the issue of the writ of *distringas* in the now improbable case of outlawry.

Where a writ of *fieri facias* has been sued out, and the sheriff, after returning that he has levied but that the goods remain in his hands for want of buyers, goes out of office, the execution creditor, instead of suing out a *venditioni exponas* (q.v.), may sue out a writ called a *distringas nuper vicecomitem* ("that you distrain the late sheriff"), directed to the present sheriff, commanding him to distrain the late sheriff to compel him to sell the goods (see R. S. C., Ord. 43, r. 5); but this remedy

against the late sheriff is now seldom necessary, the transfer of partly executed writs and processes from the late to the present sheriff being provided for by the Sheriffs Act, 1887, s. 28.

A writ of *distringas*, directed to the coroner, may be issued against a sheriff if he neglects to execute a writ of *venditioni exponas*; but nowadays such a case rarely, if ever, arises.

Where defendants are convicted of nuisance in not repairing a highway, payment of their fines does not release them. Either a fresh indictment may be preferred or writs of *distringas* (under which they can be distrained *in infinitum*) (see DISTRESS) may issue.

Fines and recognisances imposed or forfeited at quarter or petty sessions may be levied upon a writ of *distringas* (Levy of Fines Act, 1822, s. 2; Quarter Sessions Act, 1849, s. 17). Fines imposed or sums of money ordered to be paid by petty sessions or other courts of summary jurisdiction are, however, recoverable by the simpler remedy of a distress warrant (Criminal Justice Administration Act, 1914, s. 4): and that remedy is always used.

Distringas Juratores. A writ upon which the trial of causes at *nisi prius* was had in the Court of King's Bench. It commanded the sheriff to distrain the jurors named in the panel thereto by their lands and goods so as to enforce their appearance in that Court, or before the judges of assize and *nisi prius*, in order to make a jury. It was abolished by the Common Law Procedure Act, 1852, s. 104. Compare HABEAS CORPUS JURATORUM.

Distringas, Notice in Lieu of. The commonest species of *distringas* (q.v.) was that formerly issued by the Court of Exchequer, then by the Court of Chancery, and lastly by the High Court of Justice, to prevent a public company (most commonly the Bank of England) from permitting the transfer of a sum of stock in their books, or from paying the dividends on it, without previously giving notice to the person who had obtained the writ or "put on the *distringas*." The proceedings were to a great extent of a fictitious character, and were abolished and replaced by the present practice in 1880. Under the present practice (as to which see R. S. C., Ord. 46, rr. 2-11) no writ is issued, and in lieu of it a notice is given to the Bank or other company to stop the transfer of stock or payment of dividends: this notice is filed in the Central Office, with an affidavit stating that the person giving it is beneficially interested in the stock; an office copy of the affidavit and a duplicate of the notice are served on the Bank or company. The proceeding is commonly used to prevent unauthorised or fraudulent dealings with stock by the person in whose name it is standing, *e.g.* a trustee. As soon as the Bank receive a request from that person to permit a dealing with the stock, they notify the person who has served the notice, and if he does not obtain an order or injunction from a Court to restrain the dealing within eight days from the stockholder's request, the Bank are compelled to allow the stockholder to deal with the stock.

See STOP ORDER; RESTRAINING ORDER.

Disturbance. In the law of incorporeal hereditaments, disturbance is where a man infringes a right of easement, common, profit à prendre, franchise or similar right; *e.g.* by obstructing an ancient light. The rights of the aggrieved person are the same as in a case of private nuisance, namely, either by abatement, action for damages, or injunction. Where the disturbance consists in refusing to pay toll for a market, ferry, etc., or in wrongfully putting beasts on a common, the person injured also has a right of distress.

To the same class of injuries belongs disturbance of patronage, or the wrongful hindering or obstruction of a patron in the presentation of his clerk to a benefice. As to the remedies for such disturbance, see QUARE IMPEDIT; USURPATION; and also the Benefices Act, 1898.

In the law of tenure, disturbance is where a stranger, by menaces, force, persuasion or otherwise, causes a tenant to leave his tenancy: this disturbance of tenure is an injury to the lord for which an action will lie.

As to public disturbances, see AFFRAY; BRAWLING; RIOT; UNLAWFUL ASSEMBLY; also the Offences against the Person Act, 1861, s. 36 *et seq.*

See COMPENSATION FOR DISTURBANCE.

Diversity. Anciently this was a plea in bar of execution, the prisoner when put forward for sentence pleading that he was not the person who had previously been attainted (see ATTAINDER), whereupon a jury was impanelled to try the issue raised by the plea.

Diversity of Courts, The; Diversité des Courtes. A book, probably written in the reign of Henry VIII., which treats of the common law, as distinguished from the equitable, jurisdiction of the Chancellor (see CHANCERY), and deals also with the King's Bench, the Common Bench, the Exchequer, the Cinque Ports, and the Court Baron.

Dives. In the practice of the Chancery Division down to 1883, "dives costs" were costs on the ordinary scale, as opposed to the

costs allowed in an earlier time to a successful pauper suing or defending *in formâ pauperis*, and which consisted only of his costs out of pocket. Since 1883, in all the Divisions, successful paupers have been entitled to out-of-pocket costs only and cannot be allowed anything as remuneration for solicitors or counsel. See IN FORMÂ PAUPERIS.

Divest. To divest is to take away from a person an estate or interest which has already vested in him. The term is generally used with reference to gifts by will. Thus where a testator gives property to A. for life, and after his death to B., and then directs that on a certain event the property shall go to C., then B. takes a vested estate or interest subject to being divested on the happening of the event. The rule is that if the substituted legatee or devisee (C.) cannot take, then the original estate becomes absolute. Thus where a testator gave property to A. for her life, and after her death to her heirs, etc.; but in case A. should marry and have no child, then the property to belong to B.; A. married and had no child, and B. died in her lifetime without issue: it was held that A.'s estate became absolute. See DEFEASIBLE.

Divided Parishes Acts. The popular title of the Divided Parishes and Poor Law Amendment Act, 1876, the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882. Before these Acts were passed, a very large number of parishes were either intersected by the boundaries of other local government areas so that the parish was partly in a borough and partly in a rural district, partly in one rural district and partly in another, or partly in one county and partly in another, or else the parish itself was divided into parts, each of which was wholly surrounded by other parishes. And other parishes consisted of parts so nearly detached that the parish could not be conveniently worked as a unit for local government or poor law purposes. The Acts of 1876 and 1879 gave the Local Government Board power to rearrange the areas of such parishes as those described above; but (s. 2 of the Act of 1876) a small proportion of the ratepayers of a parish could object and prevent any such order being made; and little was done in the way of rearrangement until the Act of 1882 enacted, by s. 2, that every detached portion of a parish should form part of the parish by which it was surrounded.

These enactments did not affect the ecclesiastical parish.

Dividend. A dividend is literally a thing to be divided. In the Exchequer it anciently meant each of the halves into which an indenture was cut; at the Universities of Oxford and Cambridge it formerly meant the share of college revenues to which a fellow was entitled; as regards the law, it meant, in the days when officers of the Courts were paid by fees, the share of each officer; and in trade it was used as meaning the share payable to each member of a partnership. Now it means only the interest payable on the public funds; the payment made out of profits to the shareholders in a company; or the amount—running from a penny to a pound—payable upon each pound of a bankrupt's liabilities.

Divinatio, non interpretatio est, quæ omnino recedit a literâ (*Bac. Max. Reg.* 3). (An interpretation, which altogether departs from the letter is a guess and not an interpretation.)

Divisible Averments. Where an indictment contains in the one count a number of distinct averments, some of which can and others cannot be proved, the averments which cannot be proved are said to be divisible if the averments which can be proved constitute a felony or misdemeanour of a character less serious than the felony or misdemeanour which would be constituted if all the averments were proved. Thus, on an indictment for murder, the jury may find that all the averments except that as to malice aforethought are true: such a finding is a verdict of manslaughter; and the averment as to malice aforethought is therefore a divisible averment.

Divisible Contracts. A contract is said to be indivisible where the consideration is one and entire or where it appears or is stated that no consideration is to pass from one party to the other until the whole of the obligations of the other have been performed. But where the contract is really a number of considerations for a number of acts, then the contract is said to be divisible, and neither party to the contract is discharged from the performance of the whole of his particular part by reason of the fact that the other party has failed to do his part in relation to some one or other of the matters into which the contract is divided; and thus where A agrees to erect ten houses on a plot belonging to B, and B agrees to give A a lease of each house when completed, B cannot refuse to give a lease of each house which is completed if only, say, five are built by A, the contract being divisible and the remedy of B for A's failure to build the other five being an action for damages.

See APPORTIONMENT OF CONTRACT; ENTIRE.

Division. See SUPREME COURT.

Divisional Courts were first established pursuant to the Judicature Act, 1873, s. 41, and consist of two or (in special cases) more judges of the High Court of Justice, sitting to transact certain kinds of business which cannot be disposed of by one judge. When the High Court was first formed, it was intended that the Divisional Courts should take the place of the sittings *in banc* of the old Common Law Courts (see BANC); but by the Appellate Jurisdiction Act, 1876, s. 17, it was enacted that all proceedings in an action subsequent to the hearing or trial should, so far as is practicable and convenient, be taken before the judge before whom the trial or hearing took place. The business transacted before Divisional Courts consists of Crown and Election Petition business, appeals from County Courts, proceedings directed by statute to be taken before the Court, and in which the decision of the Court is final, cases of *habeas corpus*, in which a judge has directed that a rule *nisi* for the writ or the writ itself be made returnable before a Divisional Court, and appeals from Chambers in the King's Bench Division (Ord. 59, r. 1). See Ord. 59 generally.

Divisional Courts must not be confounded with the Divisions of the High Court, which are quite different things.

Divorce was a term used by the Ecclesiastical Courts to signify an interference by them with the relation of husband and wife. It was of two kinds—a divorce *a mensâ et thoro* ("from bed and board"), granted in cases where the husband or wife had been guilty of such conduct as to make conjugal intercourse impossible (as in the case of adultery, cruelty, etc.); and a divorce *a vinculo matrimonii* ("from the bond of marriage"), granted where the marriage was voidable or void *ab initio* (as in the case of the parties being within the prohibited degrees, or one of them having been already married, or being impotent when married). The former is now represented by judicial separation, the latter by a decree of nullity of marriage (q.v.; and see DISABILITY).

The term "divorce" is now applied both to decrees of nullity and decrees of dissolution of marriage. See DISSOLUTION.

Divorce Court. See COURT FOR DIVORCE AND MATRIMONIAL CAUSES; PROBATE, DIVORCE AND ADMIRALTY DIVISION. Power to try matrimonial causes at assizes is now given by the Administration of Justice Act, 1920, s. 1, but only if they come within the classes prescribed by the Lord Chief Justice and the President of the Probate, Divorce and Admiralty Division; those classes at present are (1) Undefended causes; (2) Poor persons' causes, whether defended or undefended.

Dock Defence. A barrister is said to accept a dock defence when he is directly instructed, without the intervention of a solicitor, by anyone arraigned for trial by indictment who then and there pays him a fee of £1 3s 6d., or in some places, £1 1s. See SOLICITOR.

Docket, or **Docquet** (from *dock*, to cut), is an epitome or abstract of a judgment, decree, order, etc.

In Chancery practice, a docket was used, before the Judicature Acts, for the purpose of enrolling a decree or order of the Court (see ENROLMENT). It consisted of a statement of the filing of the bill, petition, etc., and the other pleadings or proceedings; a recital of the decree made on the hearing; and the adjudication or adjudicatory part (q.v.), which set forth the mandatory part of the decree. It was certified by the Clerk of Records and Writs, signed by the Lord Chancellor, engrossed on parchment in the form of a continuous roll, and deposited at the Public Record Office, when it became a record (q.v.).

By the statute 4 & 5 Will. & Mary, c. 20, an alphabetical index or docket of judgments was directed to be kept by the Clerk of the Dockets in each of the superior Courts of common law, in order to give notice to intending purchasers of land from judgment debtors, because the judgment bound the land of the debtor from its date, even if the land had been sold before execution was issued. These dockets were closed by the Judgments Act, 1839, the provisions for registration of judgments (q.v.) having made them unnecessary.

Dock Warrant is a document issued by a dock company or dock owner stating that certain goods therein mentioned are deliverable to a person therein named or to his assigns by indorsement. Dock warrants in form resemble bills of lading (q.v.), but they differ from them in this, that when goods are at sea a purchaser who takes a bill of lading has done all that is possible to obtain possession of them, while a purchaser who takes a dock warrant can at any moment lodge it with the dock company and so take actual or constructive possession of the goods. It therefore seems that the indorsement of a dock warrant does not at common law pass the ownership in the goods, or divest the vendor's lien if the goods have not been paid for, but merely operates as a constructive delivery of them as between the indorser and indorsee, until the dock company has "attorned" to the indorsee by agreeing to

hold the goods for him. See DELIVERY ORDER; DOCUMENT OF TITLE. Dock warrants, however, are included by the Factors Act, 1889, s. 1 (4), and the Sale of Goods Act, 1893, s. 62, among the "documents of title" the possession of which gives a factor power to confer a good title to the goods on persons dealing with him in good faith. See FACTORS ACT.

Doctor and Student. See SAINT-GERMAN.

Doctors' Commons is the popular name for the buildings in which the Ecclesiastical and Admiralty Courts, and the College of Advocates practising in those Courts, were formerly held. The College was incorporated under the title of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts," whence the popular name. See ADVOCATES, COLLEGE OF.

Document. A document is any solid substance upon which matter has been expressed or described by conventional signs, with the intention of recording or transmitting that matter. Thus a piece of paper on which words are written, lithographed, printed or stamped, or expressed by arbitrary signs or ciphers, is a document; and so is a tally or piece of wood with notches to represent figures or amounts. Every deed (q.v.) is a document; but, as deeds must be on either paper or parchment, every document is not a deed.

In the law of evidence, documents are either public or private. A public document is one recording facts which have been inquired into or taken notice of for the benefit of the public by an agent authorised and accredited for the purpose. Such are Acts of Parliament, judgments and proceedings of Courts, records generally, registers of births, deaths and marriages, and other registers (q.v.). Public documents are admissible, upon production from proper custody, as evidence of the truth of the facts stated in them without being verified on oath, some being conclusive on all the world, while others (and the greater number) merely afford *primâ facie* evidence; that is, hold good until they are disproved. Hence public documents are sometimes said to prove themselves. It is, however, in many cases unnecessary to produce the original of a public document, many Acts of Parliament having provided for the proof of such documents by authenticated or official copies: thus a proclamation by the Crown or Privy Council may be proved by the production of a copy of the Gazette containing it (Documentary Evidence Act, 1868, s. 2). As to copies under the Evidence Act, 1851, see CERTIFIED COPY; see also COPY; EXEMPLIFICATION.

Private documents include deeds, wills, agreements and the like. No proof is required of a deed more than thirty years old, if it be produced from proper custody.

A document of title is a document which enables the possessor to deal with the property described in it as if he were the owner. In this way a bill of lading represents the goods while they are at sea; and by it, when the goods arrive at the port of destination, the possession of the goods may be obtained, either by the person to whom the bill of lading was originally given, or by a person to whom he has transferred it, which he may do absolutely or by way of charge, etc. Some documents of title (as in the case of a bill of lading) pass the ownership of the goods represented by them; while others, such as delivery orders and dock warrants (q.v.), are mere authorities to obtain delivery of them. See NEGOTIABLE.

As to the discovery and production of documents, see those titles.

Doderidge. John Doderidge, or Doddridge, was born in 1555, was appointed justice of the King's Bench in 1612, and died in 1628. The work on conveyancing, known as *Sheppard's Touchstone of Common Assurances*, is generally attributed to him.

Doe, John. See EJECTMENT.

Dog-draw. See STABLE-STAND.

Doggett. An old form of the word docket (q.v.). The Clerks of the Dockets were also known (*Commons Committees Reports*, (1803), Vol. 13, p. 205) as Clerks of the Doggetts and (*ib.*, 293) as Clerks of the Docquets.

Dogs. Dogs are not the subject of larceny at common law, although the stealing of the skin of a dead dog has always been a common law larceny, and a stolen dog was always the subject of an action of *trover*. The statute 10 Geo. 3, c. 18, made dog-stealing an offence punishable summarily. Dog-stealing and the unlawful possession of any stolen dog or of the skin of any stolen dog are now, in the case of first offences, punishable summarily under the Larceny Act, 1861, ss. 18, 19; and, in the case of subsequent offences, these offences are punishable on indictment under the Larceny Act, 1916, s. 5. Receiving money, etc., for recovering or pretending to recover a stolen dog is now punishable under s. 5 of the Larceny Act, 1916. Section 22 of the Larceny Act,

1861, provides a summary means of recovering a stolen dog.

Maliciously killing or wounding another man's dog is punishable summarily, in the case of a first offence, and on indictment, in the case of a second offence, under the Malicious Damage Act, 1861, s. 41. As to cruelty to dogs generally, see CRUELTY TO ANIMALS.

As to liability for injury caused by dogs, see ANIMALS, LIABILITY FOR.

It is illegal to use a dog to draw any vehicle on a public highway (Protection of Animals Act, 1911, s. 9).

A court of summary jurisdiction may order a dangerous dog to be kept under control, or may order it to be destroyed (Dogs Act, 1871, s. 2): and a dog is "dangerous" not only if it attacks human beings but also (Dogs Act, 1906, s. 1 (4)) if it is proved to have injured cattle or chased sheep.

The Ministry of Agriculture and Fisheries may make orders requiring dogs to wear collars with the name and address of the owner, or restraining dogs from being at large during any part of the time between sunset and sunrise; dogs not complying with such orders to be regarded as stray dogs (Dogs Act, 1906, s. 2).

The police are empowered to seize and detain stray dogs (Dogs Act, 1906, s. 3). Any other person who takes possession of a stray dog must either give notice to the police that he has done so, or return it to the owner (*ib.*, s. 4).

For every dog a dog licence must be taken out (Dog Licences Act, 1867, s. 3) except in the case of a dog less than six months old (*ib.*, s. 10) or a hound whelp under twelve months old owned by a master of hounds (Customs and Inland Revenue Act, 1878, s. 20), or a blind person's dog (*ib.*, s. 21), or sheep dogs, used as such, to the number and subject to the conditions prescribed (*ib.*, s. 22; Dogs Act, 1906, s. 5). A dog licence runs from the date of issue to the 31st December following (Dog Licences Act, 1867, s 5); and the duty thereon is now seven shillings and sixpence (Customs and Inland Revenue Act, 1878, s. 17).

As to poisoning dogs, see POISONED GRAIN OR FOOD.

Doitkin. A fifteenth-century name for the Dutch doit, which was a coin, originally at any rate, of silver, which came into use in England about the year 1400, and which seems to have been worth approximately one-half of the contemporary English silver farthing (q.v.). See GALLEY HALFPENNY.

Do Law. Anciently this meant to give effect to the law.

Dole. A dole is a share in waste or common land.

Thus, open meadows are frequently divided into allotments called doles or lots, the ownership of which is shifted among the whole body of proprietors in yearly rotation, determined by lot or similar methods; hence such fields are sometimes called dole-meadows. See OPEN FIELDS; SHACK; COMMON.

Sometimes the right to take the whole of the turf from a given piece of land is vested in a number of persons, who may either have "doles," *i.e.*, separate portions of turf-land allotted to them, or take the turf from any part of the land. Such a "dole," although similar to a common of turbary (see COMMON), is not a common, but an interest in land.

Under the customs of certain mining districts, waste lands are frequently divided into doles (called "dole of lead," "doles of tin," etc.), each of which is worked by a separate miner (see TINBOUNDING); these doles also are interests in land.

A dole seems also to have meant an untilled ridge left between two portions of tilled land. See DALE.

Dolo malo pactum se non servaturum (*D.* 2, 14, 7). ([*The praetor says that*] he will not uphold a contract made as the result of fraudulent deceit.) And an English Court will not uphold any such contract.

See EX DOLO MALO, ETC.

Dolosus versatur in generalibus (2 *Rep.* 34). (When a man is out to commit fraud he uses general terms.) Compare the scholastic maxim *dolus latet in generalibus.*

Dolus circuitu non purgatur (*Bac. Max. Reg.* 1). (Fraud is not purged by circuity.) "*Dolus* here means any *wrongful* act tending to the damage of another" (6 E. & B. 948): and the circuity referred to is a chain of causes, of which the most remote is tainted by fraud. And where there is such a chain the entire transaction will be regarded as tainted by the original fraud, so that the maxim *in jure non remota*, etc. (q.v.), does not apply.

Dolus dans locum contractui—literally, "fraud or deceit giving occasion for the contract,"—is applied to a false representation (q.v.) when it is such as to induce the contract. The phrase is commonly used in expressing the rule that a contract is not voidable for misrepresentation unless the representation was *dans locum contractui*, that is, unless it induced the misled party to

enter into the contract. Therefore, if the person to whom the false representation was made did not rely on it, but made further inquiries, he could not afterwards make use of it to avoid the contract.

Dolus et fraus una in parte sanari debent (*Noy, Max.* 45). (Deceit and fraud should always be remedied.)

Domanium. A demesne.

Dome-book. A book of judgments (*dooms, domes*). See ALFRED, DOOMS OF; DOOM.

Domesday. The book thus called was compiled in the reign and by the direction of William the Conqueror, and is one of the many works of permanent utility of that sovereign. It was in two volumes, and contained the details of a great survey of the kingdom, throughout all its counties, five men in each county (called justices) having been assigned in 1081 for the purpose of collecting the necessary statistics. They completed their statement thereof in 1086, when the whole returns were thrown together and formed the two volumes of Domesday Book. The name is believed to be derived from the fact that the book was originally kept in a room in Westminster Abbey, which was a *Domus Dei*, or House of God.

This work is an authority upon certain points of real property law; *e.g.*, upon the question whether lands of copyhold tenure are or are not of that peculiar species of copyhold which is called *Ancient Demesne* (q.v.).

Domesday of Ipswich. A local record which is printed at pp. 16-209 of Vol. II. of the *Black Book of the Admiralty* (q.v.). It contains amongst other things the Ipswich code of sea-laws.

Domestic Servant. One employed in or about and residing in the employer's house. But a governess or the housekeeper of a large hotel, even though so residing, does not come within the meaning of the expression. See MENIAL SERVANTS.

Domestic Tribunal. A *quasi*-judicial body, such as that consisting of the benchers (q.v.) of each of the Inns of Court, with whose decisions as regards the persons subject to their disciplinary jurisdiction, pronounced in the exercise of that jurisdiction, the Courts will not interfere.

Domicile is the legal home of a person, or that place where the law presumes that he has the intention of permanently residing, although he may be absent from it or even never have been there (*infra*).

The question where a person is domiciled may be important, because it is by the law of that place that his civil status, so far as it is independent of his voluntary acts, is regulated. Thus the question whether one person can contract a legal marriage with another is decided, not by the law of the country where he happens to go through the ceremony, but by the law of his domicile; so the legitimacy and majority of a child (except with reference to his capacity of inheriting real estate) depend on the law of its parents' domicile: and the manner in which personal estate devolves on the death of the owner is regulated not by the law of the country where he dies, nor by that of the place where the property is, but by the law of his domicile. Real estate is regulated by the *lex loci rei sitæ* (q.v.). Formerly also, a will of personal estate had to be made according to the formalities required by the law of the country where the testator was domiciled at the time of his decease; but this rule has been abolished as to wills made after the 6th August, 1861, and it is now sufficient if a will, made out of the United Kingdom by a British subject, was made according to the forms required either by the law of the place where it was made, or by the law of his domicile at the time, or by the law of his domicile of origin (Wills Act, 1861, s. 1).

Companies are also sometimes said to have domiciles when their operations are carried on in one country and their administration or direction in another: thus, a company formed in England to construct a railway in Germany, and having its principal seat of administration here, would be said to be domiciled in England. See RESIDENT; NON-RESIDENT.

Domicile is of three kinds:—

(i.) The domicile of origin or birth (natural domicile) is that which a child receives from its parents at its birth. Every person preserves his domicile of origin until he acquires another domicile, and on his abandoning or losing an acquired domicile, his domicile of origin revives. Thus, if a husband and wife domiciled in England take a voyage to India, and a child is born to them on the voyage, or in India before they acquire a domicile there, its domicile is English; if the child grows up and settles in India he acquires an Indian domicile (*infra*); if he leaves India with the intention of settling permanently in America, he loses his Indian domicile, and his English domicile revives, so that if he dies before reaching America the succession to his personal property will be regulated by English law.

(ii.) Domicile by operation of law (necessary domicile) is that which attaches to a person

independently of his or her will, and without reference to birth, residence or other facts. Thus the domicile of an infant follows that of his father, so that if the father changes his domicile the infant's domicile *ipso facto* changes too. So the domicile of a wife follows that of her husband.

(iii.) Domicile of choice arises where a person having the power of changing his domicile voluntarily abandons his existing domicile and settles in another country with the intention of permanently residing there (*animo manendi*). Questions of change of domicile are proverbially difficult to determine, owing to the ambiguity of ordinary conduct: thus a person may have lived many years abroad without having acquired a foreign domicile if it appears that his reason for doing so was a desire to avoid his creditors or the like. So an ambassador or other public officer does not acquire a domicile in the country where he resides as a matter of duty.

Some writers affirm that a person may have two domiciles, one of them being called the principal domicile. The doctrine seems contrary to the principles of English law, except in this sense, that a person may be domiciled in one place according to the law of one country, and domiciled in another place according to the law of another country. Thus the fact of a Frenchman having resided in England for a number of years may be sufficient to give him an English domicile according to English law, and yet not sufficient to divest him of his French domicile according to French law.

In Roman law there was no opportunity for questions of domicile (in our sense of the word) to arise, because there was one system of law for the whole of the civilized world. The empire was divided into municipalities or local self-governed districts (*civitates* or *respublicæ*), all subject to the *jus commune* or imperial law, but having peculiar constitutions, jurisdictions and legislatures. Every subject of the empire was a member of at least one of these municipalities, either by *origo*, which was the case where he had been born, adopted or manumitted in it, or by *domicilium*, which was the case when he voluntarily chose the municipality as the chief place of his business and pleasure. *Domicilium*, therefore, was merely a peculiar mode of becoming a member of a municipality, with its accompanying incidents of burdens and liabilities; consequently a person could at the same time have an *origo* in one municipality and a *domicilium* in another or in several others, just as a person at the present day may be rated in respect of several parishes. Many modern writers seem to suppose that the Roman *domicilium* is exactly equivalent to our "domicile," and quote the definitions and principles of the Roman law as authorities on the subject. The same ignorance has given rise to the barbarous expression *domicilium originis*, which purports to be the equivalent for "domicile of origin" in Roman law, where it would have been an impossible combination, *domicilium* and *origo* being opposed to one another. See NATIONALITY; RESIDENCE; LEX LOCI.

Domina. A title anciently given to women who were peeresses in their own right. It is to be distinguished from its English equivalent, "dame" (q.v.). It is still used as part of the formal Latin description (*Domina Regina*) of a female sovereign.

Dominant. See EASEMENT.

Dominica in ramis palmarum. The mediæval Latin for Palm Sunday.

Dominicum. The same as *domanium*.

Dominium is equivalent to ownership (q.v.). The term *dominium directum* (or direct dominion), *i.e.*, the nominal or bare right of ownership remaining in an owner who has granted the exclusive right of enjoyment and of limited or unlimited disposition over the thing to another person, and *dominium utile* (or beneficial dominion), *i.e.*, the practical right of enjoyment and disposition thus vested in the grantee, were invented by the glossators to express the relation between the *dominus* and *emphyteuta* of the Roman law, which allowed the latter a so-called *utilis in rem action*, while the *dominus* retained the *rei vindicatio directa*. The terms are also applied to the interests of the lord and the tenant under the feudal system (q.v.), and to the legal and equitable interests in property recognized by the rules of common law and of equity respectively. See ESTATE; INTEREST.

Dominium non potest esse in pendenti (*Halk.* 39) (Lordship cannot be in suspense—that is to say, there must be and is an owner for everything).

Dominus. During mediaeval times this word was commonly prefixed to the name of a clergyman or of a gentleman of position. It indicated no special dignity known to the law.

Dominus litis—"master of the suit"—is a person who has control over an action or other judicial proceeding, and can dispose of it as he thinks fit. Thus, where one of several actions has been selected as a test action, the plaintiff in that action is nevertheless *dominus litis*, and can allow it to be dismissed, or

judgment to go by default. (See CONSOLIDATION OF ACTIONS.) A solicitor or counsel employed by a person to conduct a suit for him is sometimes said to be *dominus litis* for certain purposes (*e.g.*, to compromise, withdraw a jury, etc.) without the client's instructions, and in some cases even against them.

Domo reparanda, De. A writ which anciently lay for anyone who feared that his own house would be injured by the fall of the house of his neighbour, who was required by the writ to put the dangerous house in order.

Domus conversorum. This was a house, in what is now Chancery Lane, set aside by King Henry III. for the use of such Jews as embraced Christianity. When Edward I. put an end to any possibility of further converts by expelling all Jews from England, this house was used as a depository for the rolls and records of the Chancery. The present Record Office (q.v.) occupies the site.

Domus Dei. The hospital in Southampton known also as the Hospital of St. Julian. *Domus Dei* was a generic term for a hospital (q.v.) generally.

Domus Procerum. (The House of the Nobles.) An ancient title—abbreviated into *Dom. Proc.*, or *D.P.*—of the House of Lords.

Domus sua cuique est tutissimum refugium (5 *Rep.* 91). (To every one his house is his surest refuge.) In *Seymayne's Case* it was resolved by the King's Bench:—(1) If thieves come to a man's house to rob or murder him, and he or his servants kill any of the thieves in defence of himself and his house, this is not felony; (2) When any house is recovered by action, the sheriff may break the house, and deliver the possession to the plaintiff; for after judgment it is not the house of the defendant; (3) In all cases where the king is party (as where a felony or misdemeanour has been committed), the sheriff may break the party's house to execute the king's process, if otherwise he may not enter; (4) In all cases when the door is open the sheriff may enter the house and do execution, at the suit of any subject; (5) The sheriff may break open the house of a man in order to execute process against the person or goods of another, if such other or his goods be actually therein. See *Smith's Leading Cases* (12th ed.), pp. 115 *et seq.*

Dona clandestina sunt semper suspiciosa (3 *Rep.* 81.) (Clandestine gifts are always to be regarded with suspicion.)

Donari videtur, quod nullo jure cogente conceditur. (A thing is deemed to be given when it is transferred otherwise than by virtue of a right.) This is a maxim of the Roman law.

— **Donatio inter vivos.** This is distinguished from a *donatio mortis causa* (q.v.) by the fact (1) that it is a gift which is not made by a man who is dying and because he knows that he is dying, and (2) that it may be a gift of things which do not pass by mere delivery. To constitute a *donatio inter vivos* all that is required are (1) the intention to give and (2) such acts as are necessary to give effect to the intention. Thus a horse may be given by mere delivery; while lands cannot be given except by some written instrument. The subject-matter of a *donatio inter vivos* made within three years of the death of the giver is now liable to estate duty, unless the gift be made in consideration of marriage, or unless the gift be a normal part of the expenditure of the deceased and be reasonable in view of his income and circumstances, or unless the gift is not in all more than £100 to one donee (Finance (1909-10) Act, 1910, s. 59); and unless the case be one in which neither legacy duty nor succession duty is payable (see LEGACY DUTY; SUCCESSION DUTY), the gift will also be subject to legacy duty in the case of personalty and to succession duty in the case of realty.

The most common case of a *donatio inter vivos* to any substantial amount is a voluntary settlement.

— **Donatio mortis causâ** is a gift of personal property on a death-bed. It must be made in contemplation of the donor's death, it must be intended to take effect on his death from his existing illness, and it must be completed by the delivery of the thing at the time by the donor, or by his direction, to the donee. Hence things, the property in which does not pass by delivery (such as stock), cannot be the subject of a *donatio mortis causa*. A *donatio mortis causa* resembles a legacy in being subject to legacy duty and to the debts of the deceased, but it differs from a legacy in taking effect without probate or the executor's assent. It is also of course subject to estate duty (q.v.), unless the value of the whole estate be under £100.

Donatio non præsumitur (*Jenk. Cent.* 109). (A gift is not presumed.) That is to say, the possession by A. of what had admittedly been the property of B. raises no presumption of a gift.

— **Donatio perficitur possessione accipientis** (*Jenk. Cent.* 109.) (A gift is perfected by the

possession of the subject-matter by the donee.)

Donative Advowson. See ADVOWSON.

Donator nunquam desinit possidere antequam donatarius incipiat possidere (*Dyer*, 281). (He who gives never ceases to possess until the receiver begins to possess.) See DOMINIUM NON POTEST, ETC.

Donee; Donor. In the most general sense of the words, a donor is a person who gives property, and the donee is the person to whom it is given, as in the case of a *donatio mortis causa* (q.v.). In their technical sense, "where a man giveth certaine lands or tenements to another in taile, he which maketh the gift is called the donor, and he to whom the gift is made is called the donee" (*Litt.* 57). See GIFT.

Doom, or Dome. This is literally a judgment, *e.g.*, in the *Black Book of Hereford*, fo. 46, this phrase occurs,—"So help me God, at His holy *dome*," meaning at the Last Day of Judgment. The Anglo-Saxon laws were called "dooms." See ALFRED, DOOMS OF.

Dormant. See PARTNERSHIP.

Dormant Funds. Rule 98 of the Supreme Court Funds Rules, 1915, provides that on or before the 1st March in every third year the Paymaster is to prepare a list of accounts in the books of the Pay Office (to the credit of which there stood on the preceding 1st September not less than £50) which have not been dealt with, otherwise than by the accumulation of dividends, during the fifteen years preceding such 1st September; such list is to be exhibited in the offices of the Court and is to be published in the *London Gazette*. The Paymaster, in his discretion, may give information respecting funds in the list to any person or the solicitor of any person on a request in the prescribed form being signed. The Paymaster may omit from the list any fund in respect of which he is informed that an order dealing with it will be applied for, or any fund which had been lodged under the Trustee Act, 1893, and which had been dealt with during the preceding twenty years.

The only information which the Paymaster can give is as to (1) the amount of a particular fund and (2) the date of any order of the Court regarding it. The fee payable upon a request for information is two shillings and sixpence.

The funds included in this list are popularly known as "dormant funds." The aggregate amount in 1905 was under £1,000,000; in 1914 it was about £1,100,000, and in 1920 it was about £1,490,000. In 1920 the total number of separate accounts was about 4,100, out of which over 2,000 were less than £150, and only about 200 exceeded £1,000. Some of the accounts were opened nearly 200 years ago; others have not been dealt with, except by way of accumulating dividends, for nearly fifty years.

Dormit aliquando lex, moritur nunquam (10 *Rep.* 42). (A variant of the next maxim.) See NOVUM JUDICIUM, ETC.

Dormiunt aliquando leges, nunquam moriuntur (2 *Inst.* 161). (The laws sometimes sleep, but they never die.) For example, a state of war sometimes suspends contracts and the Statute of Limitations, but ultimately the contracts operate and the statute begins to run again.

Dos. Dower: *dote* and *dotis*, are the ablative and genitive cases respectively.

Dote amissa per defaltum, De. A writ which anciently lay under the Statute of Westminster II., c. 4, for a woman who had lost her dower by default, in order that she might, notwithstanding her default, recover her dower.

Dote assignanda, De. A writ for obtaining dower which anciently lay for the widow of a tenant in chief who at his death had been seised of lands in fee or in fee-tail. (*Fitzherbert, N.B.* 26.)

Dote unde nihil habet, De. See DOWER, WRIT OF.

Doti lex favet; præmium pudoris est, ideò parcatur (*Co. Litt.* 31). (The law favours dower; it is the reward of chastity, therefore is to be preserved.) So strong is this maxim in its operation that dower, when it once attaches, cannot be defeated except by the consent of the wife, or by divorce *a vinculo*. See SPONTE VIRUM, ETC.; and UBI NULLUM, ETC.

Dotis admensuratione, De. The writ of admeasurement (q.v.).

Double. See COSTS; COUNT; DUPLICITY; DOUBLE DAMAGES; PORTION; PROBATE; PROOF; VOUCH.

Double Damages; Double Rent; Double Value. Double and treble damages are in some cases given by particular statutes. The most important instances are—(a) where a person has distrained for rent although no rent was owing, and the distress has been sold, the owner may recover double the value of the goods distrained (2 Will. and Mary, sess. 1, c. 5, s. 4); (b) where a person is guilty of pound-breach or rescue of goods distrained for rent, the person grieved shall recover treble damages (*ib.* s. 3); (c) where a tenant of land

holds over (that is, retains possession of the land) after the determination of his tenancy (see HOLDING OVER); (d) in some cases where the revenue has been defrauded by non-payment of customs, excise, or other duties, the person offending is liable to pay double or treble duty, or double or treble the value of the property. See SMUGGLING.

Double Quarrel. DUPLEX QUERELA (q.v.).

Douzen Peers. Twelve peers who, in the reign of Henry III., were assigned by the barons to act as advisers of the King.

Dower, said Lord Coke, is "that portion of lands or tenements which the wife hath for terme of her life of the lands or tenements of her husband after his decease, for the sustenance of herself and the nurture and education of her children." Dower was formerly of five kinds:—

At the common law, where a man was seised in deed or in law of land for an estate of inheritance (otherwise than as joint tenant), and died leaving a widow, she was entitled to hold the third part of such land and tenements as were her husband's at any time during the coverture, as tenant in dower for the term of her life, and notwithstanding that the husband might have sold, mortgaged or devised the lands or part of them, unless in the case of a conveyance the wife joined to release her dower, or unless she had barred her right of dower by accepting a jointure (q.v.) in lieu of it. To prevent this inconvenience, several methods were adopted to enable a person acquiring lands to alien them at a future time without his wife's concurrence; the most important of these methods was that of inserting "uses to bar dower" in the conveyance to the original purchaser. (See USES TO BAR DOWER.) But no such precaution is required in a conveyance to a man married since the 1st January, 1834, for by the Dower Act, 1833, no woman married since that day is entitled to dower out of any land which has been absolutely disposed of by her husband in his lifetime or by his will; her right to dower is subject to all partial estates and interest created by him, and to all debts, charges, encumbrances, etc., to which his lands are liable; and a husband may also wholly or partially deprive his wife of her dower by making a declaration to that effect by deed or will. So that now a widow can only claim dower as against her husband's heir-at-law, and she cannot do even that if her husband has executed a declaration to the contrary. On the other hand, the act granted widows a right of dower out of lands to which the husband had a mere right, without having had actual or legal seisin, and has extended the right of dower to equitable as well as legal estates in possession.

An action by a widow to enforce her right to dower is brought by writ of summons in the ordinary form endorsed with a claim for dower (R.S.C., Ords. 1 & 2; App. A., Pt. III., s. 4) and the judgment is executed by the sheriff assigning and delivering a third part of the lands to the widow. The action must be commenced within twelve years of the time when the right of dower accrued (Real Property Limitation Act, 1874, s. 1) and only six years arrears of dower can be recovered (Real Property Limitation Act, 1833, s. 42). A woman may give leases for twenty-one years of the lands which she holds as tenant in dower (Settled Estates Act, 1877, s. 46).

By the custom of some places a widow has the half, or a quarter, or the whole of her husband's lands; with or without special incidents. Thus, in gavelkind lands, the widow has the half for her dower so long as she remains unmarried and without child other than a child of her late husband.

The three following kinds of dower no longer exist:—

Dower *ad ostium ecclesiæ*, or endowment at the church door, says Littleton, "is where a man of full age seised in fee simple, who shall be married to a woman, and when he commeth to the church doore to be married, there, after affiance and troth plighted betweene them, he endoweth the woman of his whole land, or of the halfe, or other lesser part thereof, and there openly doth declare the quantity and the certainty of the land which she shall have for her dower. In this case the wife, after the death of her husband, may enter into the said quantity of land of which her husband endowed her without other assignment." It was abolished by s. 13 of the Dower Act, 1833.

Dower *ex assensu patris*, or dowment by assent of the father, says Littleton, "is where the father is seised of tenements in fee, and his sonne and heire apparent, when he is married, endoweth his wife at the monastery or church doore, of parcel of his father's lands or tenements with the assent of his father, and assignes [*i.e.* fixes] the quantity and parcels. In this case, after the death of the son, the wife shall enter into the same parcell without the assignment of any." This also was abolished by s. 13 of the Dower Act, 1833.

Dower *de la pluis beale*, says Littleton, is "where a man is seised [*e.g.*] of forty acres

of land, and he holdeth twenty acres of the said forty acres of one [lord] by knights service, and the other twenty acres of another in socage, and taketh wife, and hath issue a sonne, and dieth, his sonne being within the age of fourteene yeares, and the lord of whom the land is holden by knights service entreth into the twenty acres holden of him, and holdeth them as gardein in chivalrie during the nonage of the infant, and the mother of the infant entreth into the residue, and occupieth it as gardein in socage: if in this case the wife bringeth a writ of dower against the gardein in chivalry, to be endowed of the tenements holden by knights service, . . . the gardein in chivalry may pleade in such case all this matter, and shew how the wife is gardein in socage as aforesaid, and pray that it may be adjudged by the Court that the wife may endow her selfe *de la pluis beale*, *i.e.*, of the most faire of the tenements which she hath as gardein in socage, after the value of the third part which she claimes by her writ of dower to have of the tenements holden by knights service. And note that after such a judgment given, the wife may take her neighbours and in their presence endow herself by metes and bounds of the fairest part of the tenements which she hath as gardein in socage, to have and to hold to her for terme of her life: and this dower is called *dower de la pluis beale*." This was impliedly abolished by the statute 12 Car. 2, c. 24, which abolished knight service. See ADMEASUREMENT; DOWER; WRIT OF; ESTABLISHMENT OF DOWER; ESTATE; FREEBENCH; CURTESY; ASSIGNMENT; METES AND BOUNDS; RECTO DE DOTE.

Dower, Writ of. Under the old practice, when a widow had no dower assigned to her within the proper time, she had a remedy by "writ of dower *unde nihil habet*," which was issued under the statute 20 Hen. 3, c. 1. If she had only part of her dower assigned to her, she had a remedy by "writ of right of dower,"—issued under the same statute—which was a general remedy also applicable to the case of no dower being assigned. These forms of real action were abolished by the Common Law Procedure Act, 1860, s. 26, and the ordinary form of action substituted.

Dowry. Otherwise *maritagium* or marriage goods, being the fortune which, before the days of the Married Women's Property Acts, a woman was said to "bring" to her husband on marriage.

Drachm. See APOTHECARIES WEIGHT.

Draft. A draft is an order for the payment of money drawn by one person on (*i.e.*, directed to) another. Cheques and bills of exchange (q.v.) are drafts. In its technical sense a draft is an order drawn by one banker on another, but otherwise resembling an ordinary cheque.

Draft also signifies a document drawn up or framed for the purpose of discussion or consideration; e.g., a draft agreement, will, lease, conveyance, statement of claim, affidavit, etc. When the document is engrossed or copied for execution or signature the draft from which the engrossment or copy is made is the original draft. See ENGROSS.

Draftsman is anyone who draws or frames a legal document, *e.g.*, a will, conveyance, pleading, etc. (See DRAW; CONVEYANCER.) Under the old practice in Chancery, all bills, answers, etc., had to be signed, and were almost invariably drawn, by counsel. A barrister whose practice included the drafting of Chancery pleadings was called an equity draftsman, the correlative term at common law being special pleader (q.v.). The special pleader has disappeared; but the names of certain barristers practising on the Chancery side are marked in the Law List with an asterisk, which signifies "Equity Draftsman and Conveyancer."

Drain; Drainage. As regards houses, "drain" means an underground pipe or open channel for carrying off water, soil, etc., from one building or premises within the same curtilage, into a cesspool or sewer (q.v.). Sanitary authorities have power to compel the effectual drainage of houses within their respective districts. See SANITARY AUTHORITIES.

The drainage of land, that is, the construction of works for taking off superfluous water from land for the purpose of improving it (as opposed to the drainage of houses, which is of a sanitary nature), is one of the works for which limited owners are empowered to borrow or advance money and charge it on the land with the sanction of the Ministry of Agriculture and Fisheries (q v.) See IMPROVEMENT OF LAND ACTS.

The Ministry is also empowered to enable landowners to obtain advances from the Treasury for the improvement of land by drainage (Public Money Drainage Acts, 1846 to 1856), and to authorize landowners to execute works required for the drainage of their land on land belonging to other persons, on making compensation to such persons for damage thereby occasioned (Land Drainage Act, 1847).

Under the Settled Estates Act, 1877, ss. 20, 21, the High Court may direct any part of a

settled estate to be laid out for drains, and the expenses to be raised by sale, mortgage or charge of the estate. The drainage of lands is amongst the improvements specified in s. 25 of the Settled Land Act, 1882, which (see s. 26) may be carried out with, as the case requires, the approval of the trustees or the Court.

Drainage is one of the improvements allowed under the Agricultural Holdings Acts (q.v.).

See also COMMISSIONERS OF SEWERS, *sub* SEWERS.

Dram. This consists of one-sixteenth part of an ounce (Weights and Measures Act, 1878, s. 14). It is quite distinct from the drachm (q.v.) of the Apothecaries' Weights (q.v.).

Dramatic Copyright. See COPYRIGHT.

Drapery. Formerly used as meaning all kinds of woollen cloths. See, for instance, *Cay's Abridgment*, *s.v.*

Draw; Drawee; Drawer. To draw a bill of exchange is to write (or cause it to be written) and sign it; and hence to draw on a person is to draw a bill of exchange for his acceptance. The person who draws it is called the drawer, and the person to whom it is directed or addressed is called the drawee. See BILL OF EXCHANGE; DRAFT; DRAFTSMAN.

Drawbacks. Down to 1803, when goods liable to import duty were imported into the kingdom the full duty was payable in every case, but was repaid to the owner of the goods if they were exported without being used in the kingdom. Such repayment was called a "drawback." Drawbacks are still paid in the case of dutiable articles, such as tobacco leaf, which, after undergoing a process of manufacture, are exported as a manufactured article, such as roll-tobacco; but other dutiable articles, which are intended to be exported, never pay duty on importation, being kept in "warehouses" (q.v.) until they are exported.

Draw-latch. A thief. See *Lamb. Eiren. lib.* 1, c. 6.

Drenches; Drenges; Drengs; Drengi. Said by Spelman to have been Saxon landowners who had been deprived of their estates by the Conqueror but who had been reinstated as tenants *in capite* on it being shown that they were on his side, but this view would seem to be erroneous. Mr. Maitland says that they were tenants in Northumbria holding by a tenure, partly military and partly servile, which had existed before the Conquest and which continued after it. Even in the fourteenth century the "drengage" tenants of the Bishop of Durham were theoretically liable to do military service.

Drengage. The tenure of the drenches (q.v.).

Driftland; Drofland; Dryland. A yearly payment anciently made by certain tenants to their lord for the privilege of driving cattle through the manor to fairs or markets.

Drift of the Forest; Agitatio animalium in foresta. This was a rounding-up at certain in each year of all the cattle in a forest by the forest officers in order to ascertain that the forest laws were being complied with.

Driftway. A way along which there is a right to drive cattle. Along every highway there is, of course, a public right to drive cattle; but no right to drive cattle along any other way, such as a bridle-way, will be presumed, and the Court will not recognise the right unless it is proved. A man may have a private right, as an easement or under a licence, to drive cattle along a private driftway. See PRIVATE PATH: compare DROVE-WAY.

Drilling, Unauthorised. See the Unlawful Drilling Act, 1819, which makes it punishable on indictment to attend a meeting for the purpose of being drilled or of drilling others to the use of arms, unless the meeting is held under an authority of the King or (Firearms Act, 1920, s. 16) of a Secretary of State or of any officer deputed by such Secretary in the matter.

Drinclean. A rent payable in ale. See CERVISARII.

Droit; Droitural. "Droit" is Norman-French for "right" (Latin, *directum*). In the old books it signifies especially a right to land. Thus, if a tenant in fee simple was disseised of his land, his estate was said to be turned to a right, or a bare or naked right, meaning a right of ownership: the disseisor thereby acquired a mere possession (only good as against strangers), while the disseisee retained, in addition to his right of ownership, the right of possession as against the disseisor, which he could exercise either by entry or possessory action. If, however, the disseisee neglected to pursue his remedy within the time limited by law, or if he failed in a possessory action, the disseisor gained the right of possession as against him, so that the disseisee could only exercise his right of ownership by bringing a writ of right or droitural action. When a person had the right of possession, and the right of ownership, both at the same time, he was said to have *droit droit*, or *jus duplicatum*, and when to the *jus duplicatum* actual possession was added, there was said

to be a *juris et seisinæ* conjunction—a union of law and seisin—so that the title became legally complete. These distinctions were abolished when real actions were done away with. See DESCENT CAST; RIGHT; RIGHT OF ENTRY.

The writs of right were known by Law French, or a mixture of Law French and Latin, as well as by Latin titles. Thus, the writ of *Recto de rationabili parte* (q.v.) was also known as the writ of *Droit de rationabili parte*. See RECTO.

Droit de Advowson, De. An obsolete writ which lay for the owner of an advowson whose right of presentation was interfered with.

Droit d'Angarie (Jus Angariæ; Right of Angary). This is the right possessed by a belligerent to use or destroy, for purposes of offence or defence, neutral property found on their own or on enemy territory or on the open sea, subject, of course, to the obligation to make compensation to the owners. It was asserted in 1870 by the Germans who seized and sunk, for the purpose of blocking the Seine, certain French vessels which were lying in that river; and in 1918, for the purposes of the war against Germany, the English and American Governments took possession of a number of Dutch vessels which were in English and American ports. Compare PRE-EMPTION (in international law), which is a quite distinct right.

Droit-droit. A double right, that is to say, the combination of possession and interest. See *Co. Litt.* 266.

Droits of Admiralty. See ADMIRALTY, DROITS OF.

Drovers. Men who drive cattle from one place to another. Under the repealed statute 5 Eliz. c. 12, they were required to be married men and householders. Under words, now repealed, in the Sunday Observance Act, 1625 (1 Car. 1, c. 1), they were liable to a penalty for driving cattle on Sunday. If drunk while in charge of cattle they are guilty of an offence punishable summarily under the Licensing Act, 1872, s. 12.

Droveway. A way along which cattle were driven to a particular pasture. Compare DRIFTWAY.

Drug. Section 2 of the Sale of Food and Drugs Act, 1875, enacts that this expression in that Act "shall include medicine for internal or external use." But there is no statutory declaration as to what else is included. Some substances are always clearly drugs; others may in some cases be drugs and in other cases not be drugs. Beeswax, when sold for polishing purposes, is not a drug; when sold for the preparation of medicines it is a drug.

Drugging Animals. The Drugging of Animals Act, 1876, made the malicious administration of poisonous drugs to horses and other animals (which really meant "getting at" racehorses) an offence punishable under that Act with fine or imprisonment. That Act was repealed by the Protection of Animals Act, 1911, s. 18, Sch., and is replaced by s. 1 (1) (*d*) of the latter Act.

Druggists. See CHEMISTS AND DRUGGISTS.

Drugs, Dangerous. The Dangerous Drugs Act, 1920, regulates the importation, exportation, manufacture, sale and use of "opium and other dangerous drugs." For the purposes of the Act opium is divided (see s. 15) into (1) "raw opium," which includes powdered or granulated opium but not "medicinal opium"; (2) "prepared opium," which means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked; and (3) "medicinal opium," which means raw opium artificially dried. Part I. (ss. 1-3) prohibits the importation of raw opium except under licence and at approved ports, and gives power to regulate the possession, etc., of such opium. Part II. (ss. 4-5) absolutely prohibits the importation or exportation of prepared opium, and provides penalties for possessing or smoking it, and for the possession of opium-smoking utensils, and for keeping or using premises for opium smoking. Part III. (ss. 6-8) prohibits the importation or exportation without licence of "medicinal opium," morphine, cocaine, ecgonine, diamorphine (commonly known as heroin) and new drugs which may be specified in an Order in Council, and of their respective salts, and of anything containing not less than .005 of morphine or .001 of cocaine, ecgonine or diamorphine; and it regulates the manufacture and sale of such drugs.

The Act gives the police power to arrest without warrant, even upon suspicion, persons whose names and addresses cannot be ascertained or who are likely to abscond (s. 14).

Drunkenness. In the civil law, where a person at the time he enters into a contract is by reason of drunkenness incapable of understanding its terms, the contract is voidable at his option, provided his condition was known to the other party at the time.

Under the Children Act, 1908, s. 26, where a person is convicted of an offence of cruelty, or of any of the offences mentioned in the first

schedule to that Act, and where it appears to the Court that such person is an habitual drunkard and is the parent, or is living with the parent, of the child or young person in respect of whom the offence is committed, the Court may order, in lieu of imprisonment, his detention for not more than two years in a private retreat for inebriates, the keeper of which is wiling to receive him: but this provision does not affect such power as the Court may have under the Inebriates Act to commit to a State inebriate reformatory.

Where a person (charged under various statutes which make drunkenness an offence) is, and consents to be dealt with summarily as, an habitual drunkard under s. 2 (1) of the Inebriates Act, 1898 (which empowers justices to such cases to order detention in an inebriate reformatory), the Court, if satisfied that an order for detention could be made, must, upon his conviction, whether such order be made or not, notify the police of such conviction, and it thereupon becomes an offence for such person to obtain by retail, or for any person to supply to him by retail, any intoxicating liquor within three years after the date of the conviction (Licensing Act, 1902, s. 6 (2)). A person to whom this enactment applies is popularly said to be on the "Black List." The list is, however, much smaller than it might well be: for a court of summary jurisdiction cannot put even the worst habitual drunkard on the list unless he delivers himself into their hands by consenting to be dealt with summarily.

In criminal law the wholesome theory of the old writers was that a drunkard is *voluntarius dæmon;* thus Coke says "he hath no privilege thereby, but what hurt or ill he doth his drunkenness doth aggravate it." The modern principle, however, is that if the existence of a specific intention is essential to make an act a crime, the fact that the offender was drunk when he did it should be taken into account by the jury in deciding whether he had that intention. But when a man, although drunk, is not too drunk to form the intention of committing a rape, which he does in fact commit, he will, if death results from his violence, be held guilty of murder even though he was too drunk to know that his violence would cause death. The general principle in fact is that if one felony be intentionally committed any other felony which is consequentially committed by misadventure is held also to have been deliberately committed.

Drunkenness was first made punishable by the statutes 4 Jac. 1, c. 5, and 21 Jac. 1, c. 7, s. 3. Both of these enactments, which have long since been repealed, provided penalties for drunkenness in any place and in any circumstances. Under the enactments now in force, drunkenness *simpliciter* is no offence. Being found drunk in a highway or other public place, whether a building or not, or on licensed premises, being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle or steam engine, being drunk when in possession of any loaded firearms, or being guilty, while drunk, of riotous or disorderly behaviour on any highway or other public place, whether a building or not, are all offences punishable under the Licensing Act, 1872, s. 12; refusing or failing when drunk to quit any licensed premises when requested is punishable under the Licensing (Consolidation) Act, 1910, s. 80, and refusing or failing when drunk to quit any premises or place under under the Refreshment Houses Act, 1860, when requested, is punishable under the Refreshment Houses Act, 1860, s. 41. Special Acts deal with some similar offences in London and in towns generally. Drunkenness of railway servants while on duty is dealt with in the Railway Regulation Act, 1840, s. 13; the Merchant Shipping Act, 1894, s. 287, deals with drunkenness on board passenger steamers; and drunkenness while in charge, in any highway or other public place, whether a building or not, or in any licensed premises, of a child apparently under seven is punishable under the Licensing Act, 1902, s. 2 (1).

There is no statutory definition of drunkenness; and a man may be held drunk for the purpose of one offence when he would not be held drunk for the purpose of another offence. The degree of intoxication which would make an engine driver drunk, if he were driving an express, would not make him drunk if he were walking along a country lane.

The sale of firearms or ammunition to any person who is drunk is punishable summarily under the Firearms Act, 1920 (10 & 11 Geo. 5, c. 43), s. 2. See HABITUAL DRUNKARD.

Dry Exchange. Usury, under the name of "dry exchange," was prohibited by the statute 3 Hen. 7, c. 5.

Dry-rent. Rent seek; see RENT.

Duces tecum. See SUBPŒNA.

Duces tecum licet languidus. Anciently when the sheriff made a return that he could not bring his prisoner because the prisoner

was so ill (*adeo languidus*) the Court granted a *habeas corpus* in the nature of a *duces tecum licet languidus* commanding the sheriff to bring the prisoner even though the prisoner was ill (*licet languidus*).

Duchy Court of Lancaster, also called the Court of the Duchy Chamber of Lancaster, is a Court formerly held before the Chancellor of the Duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the Duchy of Lancaster and also all matters of revenue relating to the duchy. It therefore resembles the old Court of Exchequer. It seems not to be a Court of record and not to have exclusive jurisdiction. Its jurisdiction is now never exercised, and is obsolete. See CHANCELLOR; COUNTY PALATINE; PALATINE COURTS.

Duchy of Cornwall. See CORNWALL.

Duchy of Lancaster consists of those lands which formerly belonged to the dukes of Lancaster, and now belong to the Crown in right of the duchy. The duchy is distinct from the county palatine of Lancaster, and includes not only the county but also much territory at a distance from it, especially the Savoy in London and some land near Westminster. There are numerous local Acts relating to the duchy, as to which see the Index to the Statutes published by the Statute Law Revision Commissioners. See COUNTY PALATINE; CHANCELLOR; DUCHY COURT OF LANCASTER.

Due, as applied to a sum of money, means either that it is owing or that it is payable: in other words, it may mean that the debt is payable at once or at a future time. It is a question of construction which of these two meanings the word "due" bears in a given case.

Duel. See CHALLENGE TO FIGHT. Duelling is not specifically forbidden by our law. But killing or attempting to kill a man in a duel is regarded by the law as differing in no way whatever from any other deliberate and unlawful homicide or attempted homicide, and the principals (in the duelling sense) or such one of them as may survive, as well as the seconds, are punishable just as they would be in any ordinary case of murder or attempted murder or in any ordinary case of unlawful shooting or attempting to shoot or unlawful wounding. See the Offences against the Person Act, 1861, ss. 1, 14, 15, 18, 20. But though duelling had never been sanctioned under English law except in the case of trial by battle (q v.), and although killing or attempted killing in a duel had always been a capital felony in point of law, yet down to the middle of the last century jurors had regarded a fair duel with such leniency that acquittals were the rule rather than the exception.

The Rules of War of 1844 made duelling a military offence, and now the Army Act, s. 38, provides that an officer taking any part in a duel may be cashiered and that a soldier committing the same offence is liable to imprisonment.

Duellum. This does not mean a duel in the modern sense. It meant the combat which took place in trial by battle (q.v.).

Duke. The highest rank in the peerage (q.v.). The title originated in 1337, when the Black Prince was created Duke of Cornwall, and it was first conferred on a subject in 1357.

The eldest son and the eldest son of the eldest son of a duke bear during the duke's lifetime two of the lower titles of the family. Thus, there may be living at the same time the Duke of A., his son the Marquis of B., and the son's son, the Earl of C. A duke's younger sons bear by courtesy the title of Lord, and his daughters are similarly entitled to that of Lady.

Duke of York's School. This school for the sons of soldiers was founded in 1801, under the name of the Royal Military Asylum, by the Duke of York, son of George III., and for many years commander-in-chief of the British Army. It originally occupied buildings adjacent to Chelsea Hospital (q.v.), from which it was removed in 1909 to new buildings at Guston, near Dover. See the Duke of York's School (Chapel) Act, 1910.

Dum bene se gesserit. (During good conduct.) Applied to offices from which the holder cannot be removed at the mere will of the Crown, as is the case in those held *durante bene placito*. Thus a judge of the High Court can only be removed on the address of both Houses of Parliament.

Dumb Bidding. Under the now repealed statute of 1779, 19 Geo. 3, c. 56, ss. 5, 6, certain duties were imposed on the prices realised at auctions, the duties to accrue due on "the knocking down of the hammer or other closing of the bidding." A plan was devised under which a price was written down and kept from the knowledge of the bidders, whose bids were to be made upon the conditions that no bid was to be accepted unless it reached such price. This plan was intended to avoid the duties; but the Courts declared it to be a fraud upon the revenue and that the duties were payable.

Dum casta vixerit. (While she lives chastely.)

Dum fuit infra ætatem; Dum fuit non compos mentis, were writs which lay for the recovery of land which had been aliened by a person "while he was within age," or "while he was *non compos mentis.*" The former could be brought by the alienor after he had attained majority, or by his heir; the latter could only be brought by the heir. Both were abolished by the Real Property Limitation Act, 1833, s. 36.

Dum fuit in prisona. (While he was in prison.) A writ which formerly lay for a person to enable him to recover lands which he had aliened under duress of imprisonment. Abolished by the Real Property Limitation Act, 1833, s. 36.

Dum sola. (While she remains unmarried.)

Duo non possunt in solido unam rem possidere (*Co. Litt.* 368). (Two persons cannot possess one thing in entirety.)

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas—ratio et auctoritas (8 *Co.* 16). (There are two means of either confirming or impugning all things—reason and authority.)

Duplex querela is a remedy which a clerk in Holy orders has against the bishop if the latter for any reason other than some one or more of the reasons specified in ss. 2, 3, of the Benefices Act, 1898, refuses or delays to admit and institute him to a church to which he is presented. It is a monition addressed by a judge of the Ecclesiastical Court to the bishop, requiring him to admit the party complaining, with a citation requiring the bishop, in case he does not comply with the monition, to appear and show cause why the right of institution has not devolved on the judge. It sometimes also contains an inhibition commanding the bishop to do nothing pending the suit to the prejudice of the party complaining. See CITATION.

Duplicate. Agreements, deeds and other documents are frequently executed in duplicate, in order that each party may have an original in his possession. In such cases each party as a rule only executes the part which is to be delivered to the other party. The part executed by the grantor, promisor or person receiving the pecuniary consideration is called the original, and the other the duplicate. A duplicate lease is called a counterpart. See LEASE; INDENTURE.

A duplicate is the proper legal description of what is popularly known as a pawnticket.

The drawer of a bill of exchange which is lost before it is overdue can be obliged to give a duplicate bill to the person who had held the lost bill upon such holder giving security and an indemnity (Bills of Exchange Act, 1882, s. 69).

Second letters patent, granted by the Lord Chancellor in a case in which he had already issued letters patent, were formerly known as duplicates.

Duplicity. A pleading is double, or open to the objection of duplicity, when it, or a portion of it, contains more claims, charges or defences than one. Formerly the general rule was that a pleading ought not to contain more than one claim, charge or defence, but it has gradually been relaxed, and now no longer applies to civil pleadings (except so far as they may be embarrassing or otherwise objectionable) or to criminal proceedings. See COUNTS.

Durante absentia. See ADMINISTRATION; GRANT.

Durante bene placito. During the pleasure of the Crown. See DUM BENE SE GESSERIT; OFFICE.

Durante minore ætate. See ADMINISTRATOR; EXECUTOR; GRANT.

Durante viduitate. (During widowhood.)

Duress is where a man is compelled to do an act either by injury, beating or unlawful imprisonment (sometimes called duress in the strict sense), or by the threat of being killed, suffering some grievous bodily harm, or being unlawfully imprisoned (sometimes called menace, or duress *per minas*). Duress also includes threatening, beating or imprisonment of the wife, parent or child of a person.

An act done under duress has not in general the legal effect which it would otherwise have. Thus if a man is compelled by duress to execute a deed or contract he may afterwards avoid it. (See UNDUE INFLUENCE.) If a person is compelled by personal violence, or threats of death, or grievous bodily harm, to do a criminal act, the question as to whether he has or has not committed a crime will depend entirely on the facts of the particular case.

Strictly speaking, there is no such thing as duress to the goods or property of a person. If, however, a person pays money to obtain the possession of property wrongfully detained, or if he pays, under protest, an excessive charge for the performance of a duty, he can recover it back.

Durham. See COUNTY PALATINE.

Duty is the correlative of right (q.v.). In practice, however, "duty" is usually applied

to those acts which a person is bound to do by virtue of an office held by him, *e.g.*, as trustee, executor, director, &c., while the obligation created by a contract is called a debt or liability, according to its nature.

As to duties of customs and excise, see those titles.

Dwelling-house. For the purposes of the Larceny Act, 1916, " the expression ' dwelling-house ' does not include a building although within the same curtilage (q.v.) with any dwelling-house and occupied therewith unless there is a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from one to the other " (s. 46 (2)). See BURGLARY; HOUSEBREAKING; MANSION.

Dyestuffs. The Dyestuffs (Import Regulation) Act, 1920, prohibits (s. 1) the importation into the United Kingdom of dyestuffs except (s. 2) upon licence of the Board of Trade. The Act continues in force until 15th January, 1931 (s. 5).

Dying Declaration. See DECLARATION.

Dying without issue. These words, when used in any will, mean dying without issue (q.v.) living at death (Wills Act, 1837, s. 29).

Dyke-reeve. An officer who had the care of dykes and drains in fenny counties, especially in the eastern counties of England. See the repealed statute 16 & 17 Car. 2, c. 11.

Dynamite. See EXPLOSIVES.

E

Eadem mens præsumitur regis quæ est juris, et quæ esse debet, præsertim in dubiis (*Hob.* 154). (The mind of the king is presumed to be in conformity with the law, and with what it should be, especially in doubtful cases.) And so if the king does something which is contrary to law he will, on the principle embodied in the maxim *rex non potest peccare*, be deemed to have been deceived by someone or other.

Ealdorman. Literally, an elder. The title of ealdorman was applied in Anglo-Saxon times to an official who, along with the sheriff and the bishop, was one of the three chief officers of each county. He represented the king. The area of an ealdorman's jurisdiction was sometimes larger than a county, and his position was sometimes that of a viceroy. The office was not continued after the Conquest, but the name of the office was borrowed by the mediaeval alderman (q.v.) and is still used.

Ea commendandi causâ in venditionibus dicuntur si palam appareant venditorem non obligant (*D.* 18, 1, 43). (The things which, in the course of bargaining, are said merely in praise of the goods do not bind the vendor if it is clear that they are said in that way.) And so if an obviously broken-kneed horse is produced and sold as sound in limb this will not ground an action.

Ea quæ raro accidunt, non temere in agendis negotiis computantur (*D.* 50, 17, 64). (The things which seldom happen are not to be treated off-hand as factors in business transactions.) That is to say, no one is to be held responsible for not anticipating an event which would not ordinarily happen. Compare *nemo tenetur divinare*.

Earl. In Anglo-Saxon times this was a title of honour, not hereditary, borne by various high officials. After the Conquest the title in its present hereditary form came into existence.

The wife of an earl is styled the Countess of ——. His daughters bear by courtesy the title of " Lady." His younger sons are by courtesy known as " the honourable." During his lifetime his eldest son bears by courtesy the next lower title—a viscount or a barony—of the family.

The title of earl is the third in the peerage (q.v.).

Earl Marshal. The Earl Marshal and the Lord High Constable (q.v.) were the two chief officers of the feudal forces under the Norman kings. They jointly presided over the Court of Chivalry (q.v.). After the forfeiture of the office of the Lord High Constable in 1521, doubts arose as to whether the Earl Marshal could sit alone; and the matter ended by the court ceasing to sit except occasionally down to about 1740. Between 1521 and 1740 it was known as the Court of Honour of the Earl Marshal of England in matters concerning arms and honours.

The heralds (q.v.) had been officers of the Court of Chivalry and since 1521 have been nominated for office by the Earl Marshal, who appoints them under royal warrant when the appointment is approved. No new arms (in the heraldic sense) can be granted to anyone without the warrant of the Earl Marshal. The Earl Marshal is one of the high officers of state who attends the Primate at a coronation, when the Primate " presents " the new sovereign for formal recognition by the people.

In 1672 the office of Earl Marshal was granted to the then Duke of Norfolk, and it

has been held ever since by the Duke of Norfolk for the time being. See HERALD.

Earmark. Property is said to be earmarked when it can be identified or distinguished from other property of the same nature. The term is chiefly used in respect of money, which differs from most other things in being rarely capable of being earmarked. As a general rule, "money has no earmark," and therefore if a sum is paid to a banker and is mixed by him in the ordinary course of business with other money in his custody, that particular sum is incapable of being distinguished from the rest. But if money is received by a person for a special purpose, and is kept separate from his other money or is invested in some property or security which can be identified, then the money is said to be earmarked, and can be "followed," that is, claimed and recovered, by the person entitled to it. The question is of importance in cases where the receiver of the money has become insolvent, for unless it is earmarked the person entitled to it can only share in the general assets instead of recovering the whole sum. (See *Clayton's Case.*) Trust moneys can, however, be followed in bankruptcy or in the hands of anyone who has received them with notice of their character; and the proceeds of trust moneys wrongfully dealt with can also be followed, except in the case of a purchaser without notice.

Earnest. Giving an earnest or earnest-money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum (*e.g.*, a shilling) as a token that the parties are in earnest or have made up their minds. The expression is chiefly of importance from the provisions of s. 17 of the Statute of Frauds (q.v.) making the giving of "something in earnest to bind the bargain" one mode of dispensing with a written contract for the sale of goods for the price of £10 or upwards. It must be an actual payment. See ARLES; ARGENTUM DEI; ERLES; FESTING PENNY; GOD'S PENNY; DENARIUS DEI.

Earnings. See MARRIED WOMEN'S PROPERTY ACTS.

Ease, Writ of. See EXEMPTION, ETC.

Easement. When A., the owner of a piece of land, has the right of compelling B, the owner of an adjoining piece of land, either to refrain from doing something on his (B's) land, or to allow A to do something on his (B's) land, then A is said to have an easement over B's land: A is called the dominant owner, and his land the dominant tenement; B is called the servient tenant, and his land the servient tenement. The two tenements may adjoin either horizontally, as in the majority of cases, or vertically, as in the case of the owner of a stratum of minerals being entitled to work them in such a manner as to let down the surface of land owned by another man.

Vertical easements are also to be found in the rare case of flats separately owned so that they are practically separate houses built one upon the other; the owner of an upper flat is then entitled to the support of a lower flat.

The following are the principal kinds of easements:—(1) in respect of water (see WATER; WATERCOURSE); (2) in respect of air (see AIR); (3) in respect of light (see LIGHT); (4) rights of way (see WAY); (5) rights of support (see SUPPORT); (6) in respect of party-walls and fences (q.v.); (7) easements of recreation, that is to say, the right of the inhabitants of a particular place to walk, dance or hold lawful sports on the lands of another.

The law does not recognise any easement of prospect or privacy. If a landowner sells a plot of land as a site for a house which, when built, will derive a great part of its value from advantages of prospect or privacy, the landowner is not precluded from dealing with the rest of his land in such a way as to destroy the view from the house and interfere with its privacy so as materially to diminish its value.

Easements must be distinguished—(a) from rights of property or ownership (q.v.); (b) from profits à prendre (q.v.), which are rights to the produce or profit of land, while easements only relate to the user of land; (c) from natural rights (q.v.), such as the natural right to support (q.v.); (d) from licences (q.v.), which are personal, and confer no interest in the land.

As regards the servient owner, an easement is always negative, the obligation on him being either to suffer or not to do something. As regards the dominant owner, easements are divisible into affirmative and negative. An easement is affirmative when it entitles the dominant owner to make active use of the servient tenement, or to do some act which, in the absence of an easement, would be a nuisance or a trespass. The principal affirmative easements are rights of way, the right to lead or discharge water over or on a neighbour's land, the right to use or affect the water of a natural stream in a manner not justified by natural right (see WATER; WATERCOURSE), and the right to carry on an offensive

trade. An easement is negative when it merely restrains the servient owner from exercising an ordinary right of ownership over his land; such are the rights of light and air (q.v.), and the acquired right of support (q.v.).

Continuous easements are those of which the enjoyment is or may be continual without the interference of the person entitled—as in the case of an artificial watercourse, or the right to light and air—as opposed to discontinuous easements, such as rights of way.

Apparent easements are those the existence of which appears from the construction or condition of one of the tenements, so as to be capable of being seen or known on inspection: such as a drain or artificial watercourse.

Easements of necessity are those which are absolutely necessary for the enjoyment of a piece of land or building.

The distinction between these classes of easements is of importance with reference to the rule that where the owner of a piece of land divides it, and conveys one part to a person without any stipulations on the subject, then the grantee becomes entitled by what is sometimes called "the disposition of the owner of two tenements"—(1) to all continuous and apparent easements, that is, to such easements as will enable him to enjoy the property in the same way as it is evident, from its condition, that the owner enjoyed it, and (2) to all easements of necessity. Thus, where the owner of land on which were some cattle sheds made an artificial watercourse through another part of the land to supply them with water, and afterwards conveyed the cattle sheds to another person, it was held that the grantee was entitled to the apparent and continuous easement of receiving water from the watercourse on the grantor's land. So, if I have a field enclosed by my own land on all sides and I alien this field to another, he shall have a way to it over my land as an easement of necessity, for without it he could not have any benefit of the field.

In some cases an easement is accompanied by certain rights which are necessary for its enjoyment, in which case it is called the principal easement, and the accompanying rights are called secondary easements; thus a right of watercourse includes the secondary easement of going on the servient tenement to clean and repair the channel.

Easements may be created (i) by express grant, as where A grants B a right of way over A's land; (ii) by implied grant, either on the principle of the disposition of the owner of two tenements (*supra*), or on the principle that a man cannot derogate from his own grant (see DEROGATE), and (iii) by prescription (q.v.). They may be extinguished—(i) by express release; (ii) by implied release, namely, (a) by merger or unity of possession, which occurs when the two tenements become united in the ownership of one person: (b) by necessity, as where the owner of the dominant tenement does, or authorises the owner of the servient tenement to do, an act which necessarily prevents the future enjoyment of the easement; (c) by alteration of the dominant tenement, so as to make the easement inapplicable (see ENCROACHMENT; LIGHT); (d) by non-user, evidencing an intention of abandoning the easement.

In the case of a temporary or imperfect unity of possession, as where the owner of the dominant tenement acquires a lease of the servient tenement, the easement is only suspended and not extinguished, and revives when the unity of possession ceases.

As to the protection of easements, see DISTURBANCE.

Easter. Easter Day is the first Sunday after the full moon which happens upon or next after the 21st March; so that if the full moon happens on a Sunday, Easter is the first Sunday after. Easter Monday, the day after Easter Sunday, is a Bank Holiday (q.v.). See SITTINGS; TERM; VACATION.

Easterling; Esterling. An apocryphal coin, first spoken of in the sixteenth century. In the thirteenth century men wrote of *esterlingus* or *sterlingus*, but only as meaning the sterling penny, which then (see SILVER COINS) was of silver, and Matthew Paris wrote about the *moneta esterlingarum*, that is to say, the coinage of sterling pennies, and not the money of the Easterlings. But it gradually came to be believed that esterling or easterling did in fact mean a coin of the Easterlings, that is to say, the Easterling merchants.

Easterling Merchants. This would appear to be synonymous with the Hanse. See GUILDHALLA.

Easter Offerings. The statute 2 & 3 Edw. 6, c. 13, s. 10, directs that every parishioner shall pay at Easter certain offerings, where they have not been commuted (S. L. R. Act, 1887), to the clergy of his parish. These are known as Easter offerings. They are due from every householder at the rate of two pence for every member of his family who is over sixteen, unless a larger sum is due by custom; and, where they still remain payable, they are,

under the statute 7 & 8 Will. 3, c. 6, recoverable summarily before two justices. The rubric at the end of the Communion Service in the Prayer Book also enjoins payment of these offerings. Whether paid voluntarily or in pursuance of law, they are assessable for income tax.

Easter Pence. See QUADRAGESIMALS.

East Hendred. See CHILTERN HUNDREDS.

East India Company. See CHARTERED COMPANIES. This company was incorporated by royal charter on 31st December, 1600, purely for trading purposes, with a monopoly of the East India trade for fifteen years. This monopoly was finally definitely acquired about the year 1700 and lasted until 1813, after which date the company retained the monopoly only of the China trade until 1833, when its trading privileges altogether ceased. Meanwhile it had gradually developed from a mere trading company into a body governing a continually increasing area in India, and as a governing body it existed until 1858, when the administration of India was transferred from the company to the Crown.

Eastland Company. This company was incorporated in 1579, under the title of the Fellowship of the Eastland Merchants, by a charter which gave it the monopoly of trading in Prussia and in the Baltic generally. Its monopoly was abolished by the statute 23 Car. 2, c. 7, and it then fell into decay. It had originated in a charter granted by Richard II. in 1391 to the English merchants who traded to Prussia.

Eat inde sine die. When judgment was given for the defendant, and the cause was at an end, the order formerly was *eat sine die*, that is to say, let him go without a day (without any further adjournment and continuance of the cause); in effect, therefore, these words were a judgment that the king's writ commanding the defendant's attendance had now been fully satisfied, and that he was free to go. This form of judgment for the defendant continued until the use of English became compulsory in 1733. See FRENCH: compare IN MISERICORDIA, ETC.

Eau Brink. A hamlet in Norfolk about three miles north of King's Lynn. Both places are on the river Ouse. The Eau Brink Cut is an artificial channel for the Ouse, made in 1818 from Eau Brink to a point in the navigable waters of the Wash about half a mile north of Lynn. The Eau Brink Tax was the popular title of an annual charge which was imposed upon certain adjacent areas, in order to cover the cost of constructing the Cut, by various local Acts of Parliament mentioned in *The Bedford Level*, by S. Wells (Lond. 1830), at p. 759.

See the statute 35 Geo. 3, c. 77.

Eavesdropping. Eavesdroppers are "such as stand under walls or windows by night or day to hear news and to carry them to others and to make strife and debate amongst their neighbours" (*Termes de la Ley*, 317). This was formerly held to be a public nuisance indictable at the sheriff's tourn (q.v.) and at the court leet (q.v.); and now it would appear that justices can require an eavesdropper to give sureties for his good behaviour.

Ebdomarius; Ebdomary. Anciently this was an officer of a cathedral church whose duty it was to see to the proper carrying out of the various services.

Eber-murder = Abermurdrum (q.v.).

Ecclesia ecclesiæ decimas solvere non debet (*Cro. Eliz.* 479). (One church is not bound to pay tithes to another church.)

Ecclesia meliorari non deteriorari potest (2 *Eden*, 313). (The condition of the church may be improved but may not be altered for the worse.) This was a maxim of the common law with regard to the dealings of the parson, the patron, or the ordinary, with the endowments of a church.

Ecclesia non moritur (2 *Inst.* 3). (The Church does not die), although, as Coke adds, *moriuntur ecclesiastici* (churchmen die)).

Ecclesiastical Commissioners are commissioners established by the Ecclesiastical Commissioners Act, 1836, principally for the purpose of preparing schemes for the improvement of our ecclesiastical system, especially as to the equalisation of the revenues and duties of the various dioceses, and to provide for the cure of souls in parishes where assistance was required. Several of such schemes have been given effect to by Orders in Council. By later Acts a fund has been vested in the commissioners to enable them to make provision for the cure of souls in populous districts; and provision is accordingly made for the creation of ecclesiastical districts and parishes, and the appointment of ministers therein. See PARISH; NEW PARISHES.

Ecclesiastical Committee. See NATIONAL ASSEMBLY, etc.

Ecclesiastical Corporations. See CORPORATIONS.

Ecclesiastical Courts are Courts which have jurisdiction only in ecclesiastical matters. They are—(1) the two Provincial (q.v.) Courts of Canterbury and York, and (2) the

Diocesan (q.v.) Courts of each diocese. There are also various other Courts which are either obsolete or are not strictly judicial tribunals; such are the Courts of Audience (q.v.), the Court of the Vicar-General, of the Master of the Faculties, etc. See FACULTY, etc.

The Privy Council is the supreme Court of Appeal in ecclesiastical matters.

Ecclesiastical Law is that part of the law which relates to the ministrations and governments, rights and obligations, of the Church established in the State, that is, of the Church of England. It is derived from constitutions of synods and councils of the Church, from canons of Convocation, from usage, and from Acts of Parliament.

Public ecclesiastical law determines the authority of the Church and those who govern it, and is both internal and external, the former being concerned with the constitution of the Church relatively to the members of it, and the latter with the relations of the Church to the State and religious bodies not directly connected with herself. See ADVOWSON; APPROPRIATION; BISHOP; CHURCHWARDEN; DIOCESE; RECTOR; TITHES; TITLE; VICAR; VISITATION.

Ecgonine. See DRUGS, DANGEROUS.

Edgar, Laws of. See ANGLO-SAXON LAWS.

Edmund, Laws of. See ANGLO-SAXON LAWS.

Education. Under the seventeen Acts collectively entitled the Education Acts, 1870 to 1919, and various other ancillary Acts, there has been established a system of elementary education which is free, compulsory, and, so far as the State is concerned, non-denominational. The great mass of enactments above mentioned has been almost entirely repealed by the Education Act, 1921, s. 172, Sch. 7; and this Act of 1921 now codifies the whole law on the subject. See CONSCIENCE CLAUSE; COWPER-TEMPLE CLAUSE; EDUCATION, BOARD OF; EDUCATION CODE; EDUCATION COMMITTEE; ENDOWED SCHOOLS; HALF-TIMER; INDUSTRIAL SCHOOLS; LOCAL AUTHORITY; LOCAL EDUCATION AUTHORITY; PUBLIC SCHOOL; REFORMATORY; SCHOOL.

Education, Board of. This consists of the President of the Board, the Lord President of the Council, the principal Secretaries of State, the First Commissioner of the Treasury, and the Chancellor of the Exchequer (Board of Education Act, 1899, s. 1 (2)); but the Board never meets, and its functions are discharged entirely by the President, who (s. 8 (1)) is not disqualified for membership of the House of Commons. His salary is £5,000 a year. He is usually a member of the Cabinet.

The Board of Education took the place of the Education Department (Board of Education Act, 1899, s. 2 (1)) (q.v.), including the Department of Science and Art (q.v.), and under the Education Act, 1921, s. 1, it continues to be the central authority as to education.

Education Code. The conditions with which an elementary school must comply in order to obtain an annual parliamentary grant are those set forth from time to time in minutes of the Board of Education (Education Act, 1921, ss. 118-120, Sch. 6). These conditions form what is known as the Education Code (*ib.* s. 170 (19)). The part of these minutes known as the General Regulations is but little altered from year to year: but almost every year there are alterations as regards other parts of the minutes.

Education Committee. Every local education authority (q.v.) (other than one concerned only with non-elementary education, which can exercise a discretion) must establish an education committee to which all matters, other than the raising of money, must be referred for report by the authority before any action is taken. The committee must be established in accordance with a scheme (made by the authority and approved by the Board of Education) which must give the authority the right of appointing at least half the committee and which may provide for the appointment to the committee of persons who are not members of the authority (Education Act, 1921, s. 4).

Education Department. The Elementary Education Act, 1870, s. 3, provided that in that Act the term "Education Department" should mean "the Lords of the Committee of the Privy Council on Education." The Interpretation Act, 1889, s. 12 (6), gives a definition which is practically the same. This committee had been constituted by Order in Council made 10th April, 1839; in 1856 it became the Education Department. The Education Department, like the Board of Education (q.v.) at present, was the Government Department concerned with the working of the elementary education system.

Edward the Confessor, Laws of. "Profess to be an official collection, drawn up in 1070 from the mouths of local juries by wise and skilful officials. . . . Unfortunately there is no reason to suppose that it was; and, if it was, the result is certainly not to be found in the Leges Edwardi."—*Jenks' Short History*

of English Law. See also *Holdsworth's Hist. Eng. Law.* The laws are printed in *Thorpe's Ancient Laws of England,* i. 442-464.

Edward the Elder, Laws of. These are two series of laws or ordinances made by Edward the Elder, who reigned 901-925. They are to be distinguished from the Laws of Edward the Confessor.

See *Attenborough's Laws of the Earliest English Kings,* pp. 112-121, 204-206.

Eel-fares. The fry of eels. See the statute 25 Hen. 8, c. 4.

Eels. The legal status of the ordinary eel found in fresh water is peculiar. The period between 15th March and 15th June is the close season for "freshwater fish," that is to say, for all fish (other than pollen, trout, and char), which never leave fresh water and go to the open sea (Freshwater Fisheries Act, 1878, s. 11). Doubts having arisen as to whether the ordinary eel confined itself exclusively to fresh water, and therefore as to whether it was or was not a "freshwater fish," the Freshwater Fisheries Act, 1886, s. 1, declared that the term "freshwater fish" does not include eels, but that "nothing herein contained shall be deemed to authorise angling for eels during the close season." As, however, there is no prohibition of angling for eels at any time, it would appear that angling for them can never be in itself illegal, and that the only restriction on the capture of eels is that contained in the Salmon Fishery Act, 1873, s. 15, which prohibits the use in salmon rivers of nets, or, with certain exceptions, of baskets, for the capture of eels between the 1st January and 24th June, and in the Elvers (q.v.) Act, 1876.

Effractor. Anciently this meant a burglar or a housebreaker.

Effusio sanguinis. Anciently the king granted to some lords of manors, one of whom was the Abbot of Glastonbury, the right of levying a fine, known as *effusio sanguinis,* from anyone wounding so as to cause a flow of blood (*effusio sanguinis*).

Egality = "owelty" (q.v.).

Eggs. See GAME; WILD BIRDS.

Egress and Regress. See FREE ENTRY, EGRESS AND REGRESS.

Egyptians. The old legal description of gypsies, or gipsies. They seem to have been of Asiatic origin, and to have migrated into Europe during the fifteenth century. They were numerous in this country by 1514, when the statute 22 Hen. 8, c. 10, was passed. That Act, which describes them as "outlandish persons calling themselves Egyptians," made them liable to imprisonment if they failed to depart the realm within fifteen days of being commanded to go. The statute 1 & 2 Phil. & Mar., c. 4, provided that anyone importing them into the kingdom should forfeit £40, that any of them imported into the kingdom should suffer death as felons if they remained here for one month, and that those already here should also suffer death if they remained here for forty days after the issue of a proclamation requiring them all to leave the kingdom. The statute 5 Eliz., c. 20, provided that no person who had been born in the realm should be expelled, all that such persons were required to do being to engage in some honest service or work; but it provided that anyone found and remaining for one month "in the company or fellowship of vagabonds commonly called or calling themselves Egyptians" should suffer death, and it left in force the enactments directed against the further importation of gipsies into England. These enactments of Henry VIII., Philip and Mary, and Elizabeth, were for some time strictly enforced; but subsequently they fell into disuse, and ultimately the gipsies came to be dealt with only under the Vagrancy (q.v.) Acts. The statute of Elizabeth was repealed by 23 Geo. 3, c. 51; the statute of Philip and Mary was repealed, in so far as it prescribed the penalty of death, by the statute 1 Geo. 4, c. 116; and ultimately the Acts of Henry VIII., Philip and Mary, and Elizabeth were entirely repealed by the statute 19 & 20 Vict., c. 64. The only Act now in force which deals specially with the gipsies is the Highway Act, 1835, s. 72, which imposes a penalty of forty shillings on any "gypsy" encamping on the highway.

Eight Hours Act, The. The popular title of the Coal Mines Regulation Act, 1908. See COAL MINES.

Eigné. See MULIER.

— **Ei incumbit probatio qui dicit non qui negat.** (In the law of evidence the burden of proof lies on the party who asserts, not on the party who denies), for the reason that it is generally difficult, and sometimes impossible, to prove a negative. Thus, if in an action on a promissory note the defendant denied that he made the note, the burden of proof would lie on the plaintiff. But if the defendant pleaded that he had paid the note, then the affirmative would be on him. See AFFIRMANTI NON, etc.

— **Ei qui affirmat, non ei qui negat, incumbit probatio.** (The burden of proof lies on him who affirms a fact, not on him who denies it.)

This maxim was used by Lord Halsbury at p. 45 of 12 App. Cas. It is a variant of the maxim *Affirmanti non, etc.*

Eire. See EYRE.

Ejectione custodiæ, De. This, which is the Latin equivalent for the French *ejectment de garde*, was the title of a writ which lay for a guardian when turned out of any land of his ward during the minority of the latter.

Ejectione firmæ, De. The writ of ejectment which originated the old action of ejectment. The writ dated from about the year 1500. See EJECTMENT.

Ejectment is a judicial proceeding for recovering land from a person wrongfully in possession of it. Formerly, an action brought for this purpose in any of the superior Courts of common law was called an action of ejectment (*infra*), but now it is called an action for the recovery of land, as to which see RECOVERY.

Where the yearly value or rent of the land to be recovered does not exceed £100, an action of ejectment may be brought in the County Court of the district, unless a Judge of the High Court order the action to be tried in the High Court on the ground that the decision of the action would affect lands of a greater annual value than £100 (County Courts Act, 1888, s. 59; County Courts Act, 1903, s. 3).

Before the Common Law Procedure Act, 1852, the action of ejectment was a complicated proceeding, resting on several fictions. It was originally devised to escape from the still greater intricacies of real actions, which were the proper mode of trying questions of title to the freehold of land, while ejectment was available only for persons entitled to the possession of land under a lease or other chattel interest. To adapt the remedy to questions of freehold title, two fictions were introduced—one, an imaginary lease (see DEM.) by the real plaintiff (the freeholder) to an imaginary "John Doe" (the nominal plaintiff); and the other, an imaginary ouster of John Doe by "Richard Roe," the nominal defendant, commonly known as the "casual ejector" (q.v.). The person really in possession of the land was then allowed to defend the action on condition that he admitted the truth of these fictions and relied only on his title as a defence.

The Common Law Procedure Act, 1852, abolished these fictions, and made the action of ejectment similar to other actions, except that it had no pleadings. See HABERE FACIAS POSSESSIONEM; WRIT OF RESTITUTION; see also RECOVERY; LANDLORD AND TENANT; DESERTED PREMISES; WRIT OF POSSESSION.

Ejusdem generis. It is a rule of legal construction that general words following an enumeration of particulars are to have their generality limited by reference to the preceding particular enumeration, and to be construed as including only all other articles of the like nature and quality.

Ejus est interpretari cujus est condere. (He who makes the law also explains it.) This was a maxim of the Roman law, but it does not apply in our law. Nothing said either in the House of Commons or in the House of Lords can be cited to any Court in explanation of any statute.

Ejus nulla culpa est cui parere necesse sit (*D.* 50, 17, 169). (He who is bound to obey is in no fault.) That is to say, no action will lie against anyone for anything done in the execution of a duty imposed by law.

Elder Brethren. The title of the Masters of the Trinity House (q.v.).

Elder Title. A title older in point of existence coming simultaneously into operation with a title of younger origin is called the elder title, and prevails. See FIRMIOR OPERATIO LEGIS.

Election is (i) the right, and (ii) the act, of choosing: the term is applied both to rights and liabilities. "If," said Coke, "I give unto you one of my horses in my stable, there you shall have the election; for you shall be the first agent by taking or seizure of one of them."

The equitable doctrine of election is founded on the principle that there is an implied condition that he who accepts a benefit under an instrument must adopt the whole of it, conforming with all its provisions and renouncing every right inconsistent with them. Thus, suppose A. by will or deed gives to B. property belonging to C., and by the same instrument gives other property belonging to himself to C., a Court of Equity will hold C. to be entitled to the gift made to him by A. only upon the implied condition of renouncing his own property in favour of B. He is, therefore, put to his election whether he will take under the instrument, that is, take the property given him by A., and give up his own property to B., or against the instrument, that is, retain his own property, and either forfeit the property given him by A., or take it and make compensation to B. for the value of his (C.'s) own property which he has retained.

Election is also the operation of choosing a representative, officer, etc., such as a member

of Parliament, director, or the like. So, a bishop is elected by the chapter of the cathedral by virtue of a *congé d'élire*. As to election of guardian by an infant, see GUARDIAN.

Election Commissioners. If a judge who tries an election petition (q.v.) reports to the House of Commons that corrupt or illegal practices have extensively prevailed at the election, the two Houses of Parliament may by joint address apply to the Crown for the appointment of election commissioners, who must be barristers of seven years' standing, to inquire into the matter (Election Commissioners Act, 1852, s. 1; Parliamentary Elections Act, 1868, s. 15; Corrupt and Illegal Practices Prevention Act, 1883, s. 12). The commissioners sit as a Court, and are invested by the Act of 1852 with the necessary powers. They report to Parliament, setting out the evidence taken before them, and their findings upon it. Upon reports made by them a number of boroughs—mostly of small size—were from time to time disfranchised by statute; but no such disfranchisement has taken place since 1885—when the small boroughs which were more peculiarly amenable to bribery practically disappeared—and the latest instance of the appointment of an Election Commission was in 1906, when one inquired into an election for the borough of Worcester, with the result that the borough was temporarily disfranchised by the refusal in 1907 of the House of Commons to issue a writ for a new election. Election Commissioners are practically obsolete: candidates, instead of bribing individual electors, now bribe the electors as a whole with promises of predatory legislation—which is quite legal.

Election Committee. This was a committee of the House of Commons appointed to inquire into the validity of the election of its own members. Its mode of proceeding was regulated by the Act 4 & 5 Vict. c. 58, which prescribed a remedy by petition in favour of the party aggrieved, whether he were a candidate for election or an elector, and to which petition the member actually returned was made respondent. The petition was, in the first instance, delivered by either party to the general elections committee appointed by the House at the commencement of the session, and was then referred by that committee to the Select Committee, which consisted of a chairman and six other members. This select committee, being sworn duly to try the matter, were empowered for that purpose to examine witnesses on oath; and by the majority of their voices they determined the validity or invalidity of the past return, together with consequential findings. These election committees have been superseded by the judges who since 1868 have tried election petitions (q.v.).

Election de Clerke. This was a writ which lay for the election of a clerk to make and take Statutes Merchant (q.v.).

Election Expenses. By the Corrupt and Illegal Practices Prevention Act, 1883, s. 8, Sch. I., the election expenses, other than the personal expenses, of a candidate at a parliamentary election may not exceed, in boroughs, £350, where the number of electors does not exceed 2,000—there is now no such borough—and £380 where the number exceeds 2,000 with an additional £30 for every additional 1,000 electors, or, in counties, £650 where the number of electors does not exceed 2,000—there is now no such county—and £710 where the number exceeds 2,000, with an additional £60 for every additional 1,000 electors.

There is, however, no limit to the amount which a man may lawfully expend disinterestedly on public purposes in a constituency for which he subsequently happens to become a candidate; but such expenditure is injudicious unless made under expert advice.

Election Judges. The popular title of the judges of the King's Bench Division placed upon the rota (q.v.) for the trial of election petitions (q.v.), that is to say, who have been selected for that duty by the other judges.

Election Petitions are petitions for inquiry into the validity of elections of members of Parliament, when it is alleged that the return of a member is invalid for bribery or any other reason. These petitions are heard by two judges of the King's Bench Division (Parliamentary Elections Act, 1868, s. 11; Parliamentary Elections and Corrupt Practices Act, 1879, s. 2; Judicature Act, 1881, s. 13). The corrupt withdrawal of a parliamentary election petition is a misdemeanour (Corrupt and Illegal Practices Prevention Act, 1883, s. 41 (4)).

— **Electio semel facta . . . non patitur regressum** (*Co. Litt.* 146*a*). (Election once made cannot be recalled). Thus, where an agreement has been procured by fraud, the party defrauded may within a reasonable time elect to treat it as valid or to treat it as void: but once he has elected, he cannot change his mind. See QUOD SEMEL, ETC.

Electoral Division. See COUNTY COUNCIL.

Electoral Franchise. This phrase generally denotes the qualifications of the persons entitled to elect members of Parliament, whether in counties or in boroughs; although it may also apply to the qualifications (now entirely abolished) of persons entitled to become candidates for election. A brief history of the electoral franchise at different periods is as follows.—

I. In the case of counties: It appears that originally all the freeholders of the county, whether resident or not, elected the members for the county (7 Hen. 4, c. 15); that afterwards, by the statute 1 Hen. 5, c. 1, residence was made a necessary qualification; that, the number of electors occasioning turbulence, the forty shillings' freehold qualification was imposed by 8 Hen. 6, c. 7; that the statute 14 Geo. 3, c. 58, dispensed with the qualification of residence. By the Reform Act, 1832, the electors for counties were increased by the addition of copyholders and leaseholders for terms of years and of tenants at will, paying a rent of £50 a year.

II. In the case of boroughs: It appears that originally the right of election in these was very various, the chief varieties of qualification being the following:—(1) All inhabitant householders resident within the borough; (2) all inhabitants paying "scot and lot," that is to say, local rates; (3) all "potwallers," *i.e.*, persons (whether householders or lodgers) furnishing their own diet; (4) all persons holding burgage lands; and (5) all persons enjoying corporate rights. And in some boroughs two or more of these qualifications might be combined.

The Reform Act, 1832, regulated the representation as follows: A £10 household franchise was uniformly established in all boroughs, saving only the rights of corporate towns. Subsequently, by the Representation of the People Act, 1867, which extended as well to counties as to boroughs, the franchise was given as follows.

I. In the case of counties: To every person duly registered as a voter, and who was of full age and capacity, and who was the owner of lands or tenements of freehold, copyhold, or any other tenure whatever, for his own life or *pur autre vie*, or for any larger estate, of the clear yearly value of not less than £5, or who was entitled either as a lessee or assignee to the unexpired residue of a term of years which was originally for a period of not less than sixty years, determinable or not on a life or lives, of the like clear yearly value (s. 5); or who had occupied for twelve months lands or tenements within the county of the rateable value of £12, and had been rated for the same for the relief of the poor, and had paid such rates (s. 6).

II. In the case of boroughs: To every person duly registered as a voter, and who was of full age and capacity, and who had for twelve months preceding been an inhabitant occupier, whether as owner or tenant, of any dwelling-house within the borough, and who had been rated for the same for the relief of the poor, and had paid such rates (s. 3); or who as a lodger had occupied in the borough, separately and as sole tenant for twelve months preceding the same, lodgings in a house of the clear yearly value of £10 at the least, and had also resided for that period in such lodgings (s. 4.).

The Representation of the People Act, 1884, left the property qualification for county electors untouched, but (s. 5) reduced the occupation franchise for counties to £10 so as to assimilate it to the borough occupation franchise; extended (s. 2) to counties the household and lodger franchise which since 1867 had existed in boroughs, and (s. 3) made the occupier of a dwelling-house, whether in a county or in a borough, by virtue of any office, service, or employment, an inhabitant occupier who was entitled to the franchise.

Up to 1918 women had no votes for parliamentary elections. Then the Representation of the People Act, 1918, not only gave the parliamentary vote to women, but established, except in the case of persons with no fixed abode, something very like universal suffrage for adult males and for women over thirty years of age. It sweeps away all the old franchises; in s. 1 it sets out clearly the franchise for men generally; in s. 2 it sets out the university franchise, and in s. 4 it sets out the franchise for women generally.

As to the electoral franchise for the purpose of local government elections, see, as regards men, s. 3 of the Act of 1918, and, as regards women, s. 4 of the same Act.

Electricity. "Every person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity" is guilty of felony, punishable as in the case of simple larceny (Larceny Act, 1916, 6 & 7 Geo. 5, c. 50, s. 10). As to the punishment of simple larceny, see s. 37.

Electric Lighting. The Acts of general application are the Electric Lighting Acts, 1882 to 1909, and the Electric Lighting (Clauses) Act, 1899.

The Electric Lighting Act, 1882, enables persons, companies, and certain local authori-

ties to obtain powers for the supply of electricity by means either (s. 3) of a licence, granted by the Board of Trade, or (s. 4) of a Provisional Order of the Board of Trade, which is inoperative until confirmed by Act of Parliament. The powers given may be to supply for either public or private purposes (s. 3), public purposes being the lighting of streets, etc., and buildings of public resort (s. 3 (3)), and private purposes, covering everything except the sending of any telegram (s. 3 (4)), which includes any message or signal sent by electricity. The Act, which of course contains a large number of administrative sections, has been amended and supplemented, but not materially altered, by the Acts of 1888 and 1909.

The Act of 1899 contains a number of provisions which had usually been expressly inserted in every provisional order and in every special Act of Parliament for the giving of electrical powers, and enacts that except where the order or the special Act otherwise provides, those provisions shall apply to every subsequent order or special Act.

The granting of electrical powers by Board of Trade licences proved unsatisfactory, and has fallen into desuetude, the method now employed being generally either the provisional order or a special Act.

The Acts relating specially to the Metropolitan area are the London Electric Lighting Areas Act, 1904, the London Electric Supply Act, 1908, (8 Edw. 7, c. clxvii), and the London Electric Supply Act, 1910 (10 Edw. 7, and 1 Geo. 5, c. cxl).

Eleemosyna. Alms. "*Dare in puram et perpetuam eleemosynam*" (to give in pure and perpetual alms) anciently meant to give lands in frank almoign (q.v.). The plural (*eleemosynæ*) meant the possessions of the Church.

Eleemosyna Regis (Eleemosyna aratri or **carucarum).** A tax of one penny imposed by Ethelred the Unready upon every plough (q.v.) of land for the support of the poor.

Eleemosynary. See CHARITY; CORPORATION.

Elegit is a writ of execution by which a judgment creditor may obtain possession of the debtor's land, and hold it until the debt is satisfied, either out of the rents and profits, or otherwise. By the Statute of Westminster II., where a debt is recovered or acknowledged in the King's Court or damages awarded, it shall be in the election of the plaintiff, either to have a *fieri facias* to the sheriff to levy the debt (see FIERI FACIAS), or that the sheriff shall deliver to him all the chattels of the debtor (saving only his oxen and beasts of the plough), and the one half of his land, until the debt be levied upon a reasonable price or extent. From the election given to the plaintiff by this statute, and from the entry of the award of this execution on the roll, "*quod elegit sibi executionem*," the writ of *elegit* derives its name. A creditor who has sued out the writ is called an *elegit* creditor. By the Judgments Act, 1838, s. 11, the remedy by writ of *elegit* was extended to the whole of the debtor's land, including copyholds and lands over which he has an absolute power of disposition (*e.g.*, by appointment). By the Bankruptcy Act, 1883, s. 146 (1) it was provided that the writ of *elegit* should no longer extend to chattels. The Statute of Frauds (29 Car. 2, c. 3, s. 10) had made it applicable to trust estates.

In executing this writ, the sheriff first impanels a jury to inquire as to the lands of the debtor within the bailiwick and their value; the sheriff subsequently delivers legal (not actual) possession of the lands to the creditor; if the latter cannot otherwise obtain actual possession, he must bring an action of ejectment. The writ must be registered in the register of writs and judgments affecting land which is kept in the Land Registry (Land Charges Act, 1900, s. 3; Land Charges Registration and Searches Act, 1888, s. 5). While the creditor holds the lands he is called tenant by *elegit*, and has a chattel interest in them (see CHATTELS); he may obtain an order for the sale of the debtor's interest in them, by presenting a petition to the High Court in the Chancery Division (Judgments Act, 1864, s. 4). See INQUISITION; POSSESSION; EXTENT; SCIRE FACIAS.

The writ of *elegit* is a clumsy and inconvenient remedy, and up to a few years before 1883 was never used, except where the execution creditor desired to seize the debtor's land. For some years before 1883 the writ had come into use for seizing chattels, because suffering the execution of a writ of *elegit* was not an act of bankruptcy on the part of the debtor, as is the case with a writ of *fieri facias*, where the chattels were sold for £50 or upwards: but since 1883 (see *supra*) this method of evading the bankruptcy law has been made impossible.

Elisors or **Esliors** (from the French *élire*, to choose) are persons appointed to return a jury for the trial of an action when the jury returned by the sheriff and that returned by the coroner have been successively challenged to the array for partiality or default. (See CHALLENGE.) No challenge to the array can be made against a jury returned by elisors. The proceeding, however, is practically obso-

lete. It can be used only where not only the sheriff, but also the coroner, or (if there be more coroners than one) all the coroners, can be objected to as being not impartial: and that is an unlikely contingency.

Ell. An obsolete measure of length. The English ell was 42 inches. The Scottish ell was 37.2 inches; and the Flemish ell was 27 inches. See ULNA FERREA.

Eloign is to remove. See ELONGATA; ELONGAVIT.

Elongata. Where goods taken in distress and replevied were directed to be returned to the distrainor by a writ of delivery or *de retorno habendo*, and the sheriff found that they had been eloigned, that is, removed to places unknown, he used formerly to make a return to that effect, called a return of *elongata*. See REPLEVIN; CAPIAS IN WITHERNAM; RETORNO HABENDO, DE.

Elongavit. Where the plaintiff in a proceeding by foreign attachment had obtained judgment of appraisement, but by reason of some act of the garnishee the goods could not be appraised (as where he had removed them from the city, or had sold them, etc.), the serjeant-at-mace returned that the garnishee had eloigned them, *i.e.*, removed them out of the jurisdiction, and on this return (called an *elongavit*) judgment was given for the plaintiff that an inquiry should be made of the goods eloigned: this inquiry was set down for trial and the assessment was made by a jury after the manner of ordinary issues. The proceedings on the inquiry were also sometimes called the *elongavit*. See FOREIGN ATTACHMENT.

Elopement. Down to the middle of the eighteenth century this meant in the law any going away from her husband by a married woman to live in adultery with another man.

Elvers. The fry of eels. See the Elver Fishing Act, 1876, which makes the periods 1st January—28th February, and 26th April—24th June, close seasons for elvers and eels in the Severn Fishery District.

Ely. The Isle of Ely had formerly a special judicial organisation which was assimilated by the Liberty of Ely Act, 1837, to that of the rest of England. Ely was sometimes described as a county palatine: see, for instance, the statute 5 Eliz, c. 23, s. 11.

Embargo is the temporary or permanent sequestration of the property of individuals for the purposes of a Government, *e.g.*, to obtain vessels for the transport of troops, the owners being reimbursed for this forced service. This is sometimes called civil embargo. In international law, where one State has received or anticipates injury from another State, it may lay an embargo on property within its territory belonging to subjects of the offending State as a means of securing redress. Such an embargo may be civil or hostile, according as it results in peace or war. See REPRISALS.

Embarrassing. See AMENDMENT; UNCERTAINTY.

Ember Days. The Ember Days are the Wednesdays, Fridays, and Saturdays next following the first Sunday in Lent, Whit-Sunday, the 14th September, and the 13th December respectively. See FAST DAYS.

Embezzle; Embezzlement. When a clerk or servant commits theft by converting to his own use any chattel, money or valuable security received or taken into possession by him for or in the name or on account of his master or employer, his offence is called embezzlement. If a clerk or servant commits theft by converting to his own use a chattel of which he has merely the custody (not the possession) as clerk or servant of the owner, his offence is larceny and not embezzlement. As to the distinction between custody and possession, see CUSTODY. A partner can be convicted of embezzling the property of the co-partnership (Larceny Act, 1916, s. 40 (4)).

The Larceny Act, 1916, deals, in s. 17, with embezzlement generally; in s. 18 with embezzlement by postal officials, and in s. 19 with embezzlement by officials of the Bank of England or the Bank of Ireland; the offence in each case being a felony. Justices may, with the consent of the accused, deal summarily with cases of embezzlement by clerks or servants where the value of the property does not exceed £20 (Summary Jurisdiction Act, 1879, s. 12; Criminal Justice Administration Act, 1914, s. 15 (1)).

A person indicted for embezzlement may be convicted of larceny (q.v.) or *vice versa* (Larceny Act, 1916, s. 44 (2)).

Emblements. In certain cases where a tenant of land has sown corn, or set roots, or sown "hempe or flax, or any other annual profit," and his estate is determined before the crop is ready to be gathered, he or his executors shall nevertheless have it, with the right of free entry, egress and regress on the land to take it and carry it away when it is ready. This is called the right to emblements Thus if a tenant at will sows corn, and the lessor ousts him before it is ripe, he is entitled to go upon the land when it is ripe, and cut and carry it away, "because he knew not at what time the lessor would enter upon him." For a similar reason if a tenant for life sows

corn and dies, his executors shall have the crop; or if he leases the land to an under-tenant, who sows a crop, and then the tenant for life dies, the crop belongs to the under-tenant. But by the Landlord and Tenant Act, 1851, s. 1, it is provided that where a landlord entitled for his life or any other uncertain interest has let land at a rackrent, and his estate determines by his death or otherwise, then the tenant, instead of being entitled to emblements, shall continue to hold the land until the expiration of the current year of his tenancy.

From the nature of the right to emblements it is obvious that it does not exist in the case of labour which yields no immediate annual profit (as where a lessee at will plants young fruit-trees, etc.), nor in the case of the tenancy being determined by the tenant's own act: thus where a woman holding land *durante viduitate* sows the ground and marries, the landlord shall have the emblements.

Emblers de Gentz. A stealing from the people. The expression occurs in the Rolls of Parliament of 21 Edw. III (1347), where the Commons petition the King regarding "plusours murdres, emblers de gentz, roberies, homicidies, et ravissements des femmes" which were being committed.

Embracery is the common law misdemeanour committed by a person who by any means whatever, except the production of evidence and argument in open Court, attempts to influence or instruct any juryman, or who gives any reward to a juryman for anything done by the juryman as such, even though there was no previous promise of reward. The offence is also committed by a juryman who receives any reward for or in contemplation of anything which he has done or may do as a juryman.

The County Juries Act, 1825, s. 61, preserves the right to prosecute for embracery.

Embring Days. The old name for what are now known as Ember Days (q.v.). In the statute 2 & 3 Edw. 6, c. 19, they are called "Ymbringe dayes."

Emendals. A fund set aside to provide for depreciation and repairs of buildings, etc.; it is used in the accounts of the Middle Temple.

Emendatio. Putting such and such a thing in proper order. Thus the *Assisa panis et cervisiæ* (q.v.) was sometimes called the *Emendatio panis et cervisiæ*.

Emigrant Runner. This expression is defined in s. 347 of the Merchant Shipping Act, 1894, which (ss. 348, 350, 351) requires that an emigrant runner must be licensed and wear a distinctive badge.

Eminent Domain. The right of a Government to take private property for public purposes. The doctrine is of American origin. In this country expression has been given to it by the various Acts under which land is acquired, without the consent of the owner, for works of public utility, such as railways, and also by the Defence Acts (q.v.), and in the emergency legislation which arose out of the Great War of 1914—1918. But the doctrine is unknown to our common law. Compare EXPROPRIATION.

Empire Settlement. The Empire Settlement Act, 1922, was passed "in order to make better provision for furthering British settlement in His Majesty's Oversea Dominions," and provides that there may be raised for that purpose not more than £1,500,000 during the financial year 1922-3, and not more than £3,000,000 in any subsequent year. The Act applies to protectorates as well as to actual British possessions

Employer. Defined in s. 13 of the Workmen's Compensation Act, 1906, for the purposes of that Act.

Employers' Liability; Employers and Workmen. See MASTER AND SERVANT; WORKMEN'S COMPENSATION; COMMON EMPLOYMENT.

Enabling. See STATUTE.

Enabling Act, The. A popular title of the statute 9 & 10 Geo. 5, c. 76. See NATIONAL ASSEMBLY, ETC.

En autre droit. (In the right of another.)

Enclosure. See INCLOSURE.

Encroachment is where a person attempts to extend a right possessed by him, as where a tenant of land takes in or adds to it other land adjoining or near to it, so as to make the added land appear to be part of his original holding. The general rule is that if the wrongful act is acquiesced in, the encroachment (that is, the land added) is considered as annexed to the original holding, and as having the same incidents as if it had originally formed part of it. Therefore, if a lessee of land makes an encroachment on an adjoining waste (q.v.), at the expiration of the tenancy the encroachment will as a general rule belong to the landlord and not to the tenant.

In the law of easements, where the owner of an easement alters the dominant tenement, so as to impose an additional restriction or burden on the servient tenement, he is said to commit an encroachment. The principle seems to be that if the excess can be ascertained and separated, such excess alone is

bad, and the original right remains, but that if the original right and the encroachment are so blended together that they cannot be separated, then the original right is lost or suspended so long as the dominant tenement remains in its altered form.

Encumber; Encumbrance. To encumber land is to make it subject to a charge or liability, *e.g.*, by mortgaging it. Encumbrances include not only mortgages and other voluntary charges, but also liens, *lites pendentes*, registered judgments and writs of execution, etc. See COVENANT.

Endow; Endowment. See CHARITY. Endow also meant to give, and endowment meant giving, a woman the right to dower. See FINE FOR ENDOWMENT.

Endowed Schools. An ". . . endowed school means a school which is . . . wholly or partly endowed by means of any endowment . . ." (Endowed Schools Act, 1869, s. 5), but the mere fact that exhibitions are attached to a school does not make it an endowed school (*ib.*). The expression "endowed schools" does not include (1) the public schools (q.v.); (2) any school maintained wholly or in part by voluntary subscriptions which is endowed with buildings, etc., but not with an income; (3) any school in receipt of an annual parliamentary grant unless such school be a grammar school (q.v.) or a school a department only whereof receives such grant; (4) any school maintained out of an endowment which may lawfully be used for non-educational purposes; (5) any school (unless otherwise an endowed school) maintained out of an endowment which may lawfully be applied to other educational purposes; (6) any school (unless otherwise an endowed school) which receives assistance out of an endowment applicable solely to the education of ministers of religion or to the teaching of any profession; and (7) a school which before 1869 was used solely for the education of choristers (*ib.*, s. 8); and (8) any school, not being a grammar school or a department of a grammar school, which on the 1st September, 1873, was an elementary school within the meaning of the Elementary Education Act, 1870, and which had a gross annual endowment income of not more than £100 (Endowed Schools Act, 1873, s. 3). The object of the Acts (which were temporary, but which have been continued by the various Expiring Laws Continuance Acts) was the reorganisation of endowed schools by means of "schemes" made by a specially appointed commission. The powers of the commission were transferred by the Endowed Schools Act, 1874, s. 4, to the Charity Commissioners, from whom they were again transferred to the Board of Education (q.v.) by Order in Council made pursuant to the Board of Education Act, 1899.

Enfeoff is the technical and proper operative word of a feoffment (q.v.); and see OPERATIVE WORDS.

Enfranchise; Enfranchisement. To enfranchise is to make free or to confer a liberty. Thus, in the old books a man is said to be enfranchised when he was made a free man of a city, or burgess of a borough, or when an alie alien was made a denizen or a villein was manumitted. At the present day, to enfranchise often means to confer on a man the franchise, or the liberty of voting at parliamentary elections.

To enfranchise copyhold land is to free it from the customs of that tenure and to render it subject to the same law as freehold land. The operation may take place either at common law or under a statute. Enfranchisement at common law is effected by the conveyance of the freehold to the copyholder, or by a release of all customs and services, by the freeholder. Statutory enfranchisement now takes place under the Copyhold Act, 1894, and is either voluntary or compulsory. The provisions as to voluntary enfranchisement make it possible, with the consent of the Ministry of Agriculture and Fisheries (Copyhold Act, 1894, s. 14), for persons to enfranchise who could not do so at common law; *e.g.*, persons having limited interests. Compulsory enfranchisement is effected by an award of the Ministry, made on the application of either lord or tenant; the amount of compensation payable to the lord in commutation of his rights to fines, heriots, etc., is settled by valuation (*ib.*, s. 7). The compensation is to consist of a lump sum except in certain specified cases, when it may be an annuity charged on the land and amounting to four per cent. per annum on the lump sum which otherwise would be payable (s. 8). On a statutory enfranchisement, the rights of the lord or tenant to sporting rights over, or to any minerals under, the land are not affected (s. 23), and the lord, on escheat for want of heirs, has the same rights as if there had been no enfranchisement (s. 21).

The Copyhold Act, 1894, repealed and re-enacted, with slight alterations, all the pre-existing statutes relating to enfranchisement. It contains all the statute law on the subject, as it has not been amended by any later Act.

Engagement, in its most general sense, is any undertaking or promise, but in practice the term has been appropriated to denote a contract entered into by a married woman with the intention of binding or charging her separate estate. See SEPARATE ESTATE.

Englecery; Engleschire; Englishry; Engleceria. This meant the plea that a murdered man was an Englishman. It is stated to have arisen in connection with a law of Canute, passed for the protection of his Danish followers, under which the town or hundred in which a man was murdered was made liable to a fine—unless it was proved that the man was only an Englishman. No such law appears amongst the laws of Canute, as published by the Record Commission; but the liability of the hundred or town for the murder of anyone other than an Englishman was certainly declared by the laws of Henry I., xcii, ss. 1, 9, and the presentment in Englishry, under which the fine was exacted, was part of our legal system until it was abolished by 14 Edw. 3, st. 1, c. 4. See MURDRUM.

English. See FRENCH.

English Bill. See BILL OF COMPLAINT.

English Channel District. In Part X. (dealing with pilotage) of the Merchant Shipping Act, 1894, it is declared by s. 618 that this district consists of the seas between Dungeness and the Isle of Wight.

English Information. This is the proceeding by which an equity suit is instituted by the Crown on the Revenue side of the King's Bench Division. It is so called in order to distinguish it from the information—sometimes called a Latin information—used in proceedings by the Crown to recover money or chattels. See INFORMATION; BILL OF COMPLAINT.

Engravings. See COPYRIGHT.

Engross; Engrossment. Formerly to engross a document was to write it in a peculiar hand (chiefly remarkable for its illegibility), derived from the court-hand in which records were anciently written. This engrossing hand was also used until well into the last century in transcribing wills at the Probate Office, but has now given way to the ordinary round hand.

At the present day, engrossing means copying a deed, agreement or the like with all words, dates and amounts written at length, and with the formal testatum and attestation clauses, so as to be ready for execution.

In the criminal law, engrossing was the offence of buying up large quantities of corn, etc., with intent to sell them again.

The statute 7 & 8 Vict. c. 24, repealed all the statutes under which engrossing, as well as regrating (q.v.) and forestalling (q.v.), had been made illegal.

Enitia pars or **Aeisnetia,** which is derived of the old French word *eisne* (eldest; modern French *aîné*), and means the part of the eldest, is used in the old books to denote the part or share taken by the eldest sister when several coparceners make partition of their land by agreement. See SECTA FACIENDA, ETC.

Enjoyment is the exercise of a right. It is to a right what possession is to a corporeal thing, and it is therefore divisible, like possession, into simple, rightful, permissive, adverse, etc. Adverse enjoyment is more commonly known as "enjoyment as of right," and occurs where a person exercises a right which does not belong to him in the same manner as if he were entitled to it, and without the permission of the true owner. Enjoyment which is open, peaceable, continuous, and of right, resembles adverse possession in being a mode of acquiring by lapse of time the right so enjoyed. See PRESCRIPTION.

Enlargement. When a tenant in tail has created a base fee in lands and it afterwards becomes united with the remainder or reversion in fee in the same lands in the same person, and there is no intermediate estate between them, then the base fee does not merge in the fee, but is *ipso facto* enlarged into as large an estate as a tenant in tail with the consent of the protector, if any, might have created by a disentailing assurance if the remainder or reversion had been vested in any other person (Fines and Recoveries Act, 1833, s. 39). Thus if land is settled upon A. for life, with remainder in tail to B., with remainder in fee to C., and B. executes a disentailing deed without the consent of A., the protector, B. acquires a base fee; if he subsequently purchases the reversion from C., his base fee is enlarged into a fee simple, because if he had executed a disentailing assurance with the consent of A., the protector, he would have created a fee simple. The object of the rule of law which produces an enlargement instead of (as in ordinary cases) a merger, is to prevent any mesne incumbrances from being let in or accelerated: thus, if in the above example C. had mortgaged his reversion before conveying it to B., the enlargement would destroy the incumbrance thus created, while a merger would have made it a charge on B.'s new fee simple. See MERGER.

The enlargement, merely by the execution of a deed by the tenant, of long terms of years

into freehold, can be effected under the Conveyancing Act, 1881, s. 65, and the Conveyancing Act, 1882, s. 11. The terms to which those sections refer are terms of not less than 200 years unexpired out of terms which originally were not less than 300 years, where no rent, or only a peppercorn or other nominal rent, is payable.

Enlarger l'estate. Where there is a tenant for life or years with remainder to another in fee and the remainderman releases all his right to the tenant for life or years, so as to give the latter the fee, the remainderman is said to "enlarge the estate." More generally, enlarging the estate is the conveyance of the interest of anyone entitled in remainder or reversion to the prior particular tenant.

Enormia. See ALIA ENORMIA.

Enpleet. The ancient form of implead (q.v.).

Enquiry. See INQUIRY; INQUIRY, WRIT OF.

Enrol; Enrolment; Enrolment Office. To enrol is to enter (that is, copy) a document on an official record. Originally such records were kept in the shape of continuous rolls of parchment, but now most, if not all, of them are kept in books of the ordinary shape. (See ROLL.) The principal documents which require enrolment at the present day are recognisances (q.v.) and disentailing assurances (q.v.). See also BARGAIN AND SALE.

The Enrolment Office was a department of the Court of Chancery and of the Chancery Division of the High Court, in which, as its name implies, the enrolment of documents was effected. By the Judicature (Officers) Act, 1879, the Enrolment Office was amalgamated with the Central Office (q.v.). See CLERK OF ENROLMENTS.

In the practice of the Court of Chancery before the Judicature Acts its decrees were not unfrequently enrolled in order to prevent appeals or rehearings being brought from a judge of first instance to the Court of Appeal in Chancery. The effect was that an appeal could only be brought to the House of Lords, or by a bill of review. (See DOCKET.) Now, except where enrolment is specially required by statute, enrolment never takes place, and it is expressly declared to be unnecessary by Ord. 61, r. 8.

A judgment of the Chancery Division in Ireland must be enrolled in the Central Office here if it be proposed to enforce the judgment in this country (41 Geo. 3, c. 90, s. 6).

Enseint; Ensient. In old law French, this meant pregnancy.

Entail. An entail exists when land is limited to a person and the heirs of his body, with or without prior estates. The land is then said to be entailed. See ESTATE TAIL; QUASI ENTAIL.

Enter is used not only in the technical sense of going upon land (see ENTRY), but also in the sense of making in a book or record a note of a transaction or a transcript of a document. Thus, a defendant to an action, if he wishes to contest it, enters an appearance (q.v.). Every order or judgment pronounced by the Chancery Division is entered or copied into the registrar's book, and until this is done the order or judgment is not complete and cannot be enforced. In the King's Bench Division, the operation of entering a judgment is usually called "signing judgment." See PASS; MINUTES.

Entering (or Marking) Short. If a bill which is not yet due is lodged by the holder with his bankers, the bankers may do one of two things: (1) they may allow the holder to treat it as cash, interest being charged to him in respect of advances made on it pending maturity, or (2) they may enter it short, that is to say, merely note it as having been received for collection in due course, and credit it only when paid. When the bill is "entered short" the holder is entitled to it if the bank becomes insolvent before the bill matures, the bank in this case, being in fact a mere bailee of the bill so long as it remains unpaid.

Entire. A contract, claim, or the like, is said to be entire when each part is so connected with the rest that it cannot be separated into several distinct contracts or claims, as opposed to a severable or apportionable contract, etc. Thus, where a sailor was to be paid a certain sum for serving on a voyage and he died before the voyage was completed, it was held that his executor had no claim to any part of his wages; because the contract was to perform the complete voyage. See APPORTIONMENT OF CONTRACTS; DIVISIBLE CONTRACTS; SEVER.

As to entire hereditaments, see HEREDITAMENT.

Entireties. Before 1st January, 1883 (the date on which the Married Women's Property Act, 1882, came into operation), if lands were given to A. and B., husband and wife, and their heirs, they were not joint tenants, because they were in law considered as one person, but they took by entireties, that is, neither could dispose of any part of the land without the concurrence of the other, and if they did not agree in making a disposition, the survivor took the whole; and during the

coverture the husband was entitled to the rents and profits. (See ESTATE.) Now, however, husband and wife take as joint tenants, the wife's share belonging to her for her separate use (q.v.): but they are still to some extent regarded in law as one person, for if a gift be made to a husband and wife and a third person, the husband and wife, unless a contrary intention be indicated by the donor, will take only one moiety, as joint tenants, and the third person will take the other moiety.

Entitle. In its usual sense, to entitle is to give a right; therefore a person is said to be entitled to property when he has a right to it. See RIGHT; TITLE.

In ecclesiastical law, to entitle is to give a title for ordination as a minister. See TITLE.

Entry. Entry is the act of going on land, or doing something equivalent, with the intention of asserting a right in the land. It may be made either in person or by a representative, such as a guardian, lessee, etc.

Entry is actual when the person making it goes on the land itself; while an entry in law is a constructive or fictitious entry. Thus, said Coke, where "a man maketh a charter of feoffment, and delivers seisin within the view, [and] the feoffee dares not enter for feare of death, but claims the same, this shall vest the freehold and inheritance in him." See LIVERY; and FREE ENTRY, EGRESS AND REGRESS. As to forcible entry, see FORCIBLE ENTRY.

The doctrine of entry is now of much less importance than formerly, owing to the abolition of most of the rules relating to seisin (q.v.); but entry is still a means of regaining possession of land from a person wrongfully in possession, being equivalent to recaption (q.v.) in the case of goods. It must be peaceable, and must be made within the period allowed by the Statutes of Limitation. See RIGHT OF ENTRY.

In the old books, "entry" often signifies a "right of entry" (q.v.).

As regards the Customs laws, "entry" is the declaration, to the Customs authorities, of the nature and quantity of a ship's cargo. See BILL OF ENTRY; BILL OF SIGHT; POST-ENTRY.

Entry ad communem legem. The writ of "entry at common law" which anciently lay for a reversioner where a tenant for life or *pur autre vie*, or by the curtesy, or in dower had aliened the land and died. It was one of the many writs which were abolished by the Real Property Limitation Act, 1833, s. 36.

Entry sur abatement. One of the varieties of the writ of entry. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Entry sur alienationem, dum fuit non compos mentis, dum fuit infra ætatem, dum fuit in prisona. See DUM FUIT, ETC.

Entry sur disseisin, in the quibus, in the per, in the per and cui, or in the post. A real action which lay for one from whom lands were wrongfully withheld. The writ was said to be *in the quibus* when it was against the person who had actually committed the wrong; *in the per* when it was against the heir or grantee of such person; *in the per and cui* where there had been two descents, two alienations or a descent and an alienation since the original commission of the wrong; and *in the post* when the original wrong was still more remote. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Entry, Writs of. In addition to those writs set out with "Entry" as the first word of the title see, as to others, AD TERMINUM QUI PRETERIT; CASU CONSIMILI; CASU PROVISO; CAUSA MATRIMONII PRÆLOCUTI; CUI ANTE DIVORTIUM; CUI IN VITA; DUM FUIT, ETC.; QUARE EJECIT INFRA TERMINUM; SINE ASSENSU CAPITALI.

Enure is to operate or take effect. Thus, where it is said that if an attornment be made by a tenant of land to one only of several grantees of the reversion, it shall enure to the rest, it is meant that the attornment takes effect as if it had been made to all. See ATTORNMENT.

En ventre sa mere. An unborn child is described in the law as being "*en ventre sa mere.*" Such a child is not regarded for the purposes of the criminal law as having been born. To occasion its death before delivery takes place is neither murder nor manslaughter (see, however, ABORTION); but its death after delivery has taken place may, if caused by an act before delivery, ground a charge for either the one offence or the other. For nearly every purpose of the civil law an unborn child is treated as born, where such a course is for the benefit of the child, but not where such a course is to its detriment. It may take property by will or grant, and may have a guardian assigned; and if an estate is limited to A. for life and after his death to his eldest son, and A. dies leaving his wife *enceinte* of a son, the posthumous son will take the estate, notwithstanding the rules as to contingent remainders. See also GESTATION.

Eodem ligamine quo ligatum est dissolvitur (*Co. Litt.* 212b). (An obligation is put an end to by the same means which imposed it.) Thus, if a man be bound by a bond to pay a

certain sum, he cannot escape liability for payment in full, unless, upon payment in part, he receives an acquittance under seal for the whole. See EADEM MODO, ETC.

Eodem modo quo quid constituitur, eodem modo destruitur (6 *Co.* 53). (A thing is made and is destroyed by one and the same means.) See JURA EODEM, ETC.

Eo instanti. (At that instant; at the same instant; immediately.)

Eorl. In Anglo-Saxon times the population was divided into eorls and ceorls, the eorls being the large landowners and the ceorls (q.v.) the poor freeholders. The eorl was quite distinct from the earl (q.v.). The distinction between eorl and ceorl seems to have been one rather of social than of legal status, and corresponded more or less to the Scottish fifteenth-century distinction between "knight and churl," and to the much later distinction between "gentle and simple."

Epiphany. The 6th January; also known as Twelfth Day.

Episcopalia. Anciently this meant synodals or other customary payments made by the clergy to the bishop. They were also known as the *onus episcopale*.

Episcopus alterius mandato quam regis non tenetur obtemperare (*Co. Litt.* 134). (A bishop is not bound to obey any mandate save the king's.) That is to say, he need pay no attention to the Pope.

Equality (of Exchange or Partition). See OWELTY.

Equitable denotes (1) that which is fair (see EQUITY); (2) that which arises from a liberal construction or application of a legal rule or remedy (see EQUITY); (3) that which is in accordance with, or regulated, recognised, or enforced by, the rules of equity, as opposed to those of the common law. Thus, an equitable right, estate, or interest, is one which was originally recognised and enforced only in Courts of Equity—*e.g.*, that of a *cestui que trust*, or of a mortgagor, after the day fixed for redemption had passed. So an equitable tenant for life is a person who is entitled for his life to the rents or income of property which is vested in trustees for his benefit.

The Court of Chancery (q.v.) had a jurisdiction known as its equitable jurisdiction.

Equitable fraud and equitable waste are wrongs which were originally recognised and restrained only in Courts of Equity. See ASSETS; ASSIGNMENT OF CHOSES IN ACTION; ESTATE; FRAUD; MORTGAGE; WASTE.

Equity. In its primary sense, equity is fairness, or that rule of conduct which in the opinion of a person or class ought to be followed by all other persons.

Equity in this sense is frequently opposed to law and legality, because that which is fair does not always constitute a legal claim or defence. Hence, when a legal rule or remedy is capable of two interpretations or applications, one literal or restrictive, and the other liberal (that is, calculated to make the rule or remedy operate fairly, and to extend its benefit to as many cases as possible), the latter is called the equitable construction or application. It is in this sense that the right of stoppage in transitu (q.v.), the writ of *audita querela* (q.v.), and the old action of ejectment are said to be equitable remedies; and the jurisdiction of the common law Courts, to set aside judgments obtained by default and confession, was called an equitable one. And when a statute contains a provision which applies literally to only a particular class of cases, but it is clear from the nature of the provision that if another class of cases had been present to the mind of its framer it would have been extended to them, they are said to be within the equity of the statute: "and the reason hereof," said Coke, "is that the lawmakers could not possibly set downe all cases in expresse terms." Thus an old statute literally applying only to executors was held to extend by equity to administrators, "because," as the *Termes de la Ley* puts it, "they are of the like kind."

But the most important sense of the word "equity" is that in which it denotes a part of the general law of England, as opposed to what is called the common law (q.v.). The distinction is purely historical, and arose from the fact that in former times the common law Courts provided no remedy in many cases where one was required. Hence the custom grew up of applying for redress in such cases either to the King in Parliament or to the King in Council, who referred the matters to the Chancellor. In later times petitions were presented to the Chancellor direct. The Chancellor, being an ecclesiastic, and keeper of the King's conscience, did not feel bound to follow the rules of the common law, but gave such relief as he thought the petitioner or plaintiff entitled to "in equity and good conscience." (See CHANCELLOR.) For a long time "equity" was an indefinite standard of right and wrong, and was regarded as having the function of mitigating the rigour and supplying the defects of the common law without any limitation except the personal opinions of each Chancellor; but in more modern times equity became as fixed

in its principles, and as incapable of introducing new remedies without the authority of Parliament, as the common law itself.

At the time of the passing of the Judicature Act, 1873, equity was to be regarded as part of the law of England, distinguished from the common law only by reason of its being, or having originally been, administered in different Courts (the principal of which was the Court of Chancery), and by a different procedure. In many cases the Chancery and common law Courts had concurrent jurisdiction (*e.g.*, in cases of ordinary fraud), while in other cases the same right gave rise to different remedies in law and in equity (see SPECIFIC PERFORMANCE; INJUNCTION), and in others the rules of law and equity were in direct conflict.

The principal subjects on which the rules of equity either differed from or conflicted with those of the common law were trusts, administration, separate property of married women, mortgages, penalties and forfeitures, and the wrongs known as equitable fraud, equitable waste, etc. (see those titles); and as the doctrines of equity on these points were not recognised by the Courts of common law, it sometimes happened that a person had rights which the common law would have allowed and assisted him to enforce, but which a Court of equity would not allow him to enforce, on the ground of the existence of an equitable right overriding or qualifying his legal rights. Thus, if A, the owner of an estate, stood by and allowed B to expend money upon it in the belief that the estate belonged to himself, then if A brought an action of ejectment against B to recover possession of the estate, B might file a bill in equity to restrain A from ejecting him without compensation for his expenditure. Various statutes were from time to time passed, giving the common law Courts jurisdiction to recognise and enforce equitable rights; and finally, by the Judicature Acts, 1873 and 1875, the superior Courts of equity and common law were amalgamated, the rules of law and equity on certain points were assimilated, and on all other points where there is a difference or conflict between equity and common law, the rules of equity are to prevail. Every Division and judge of the Supreme Court of Judicature is now bound to recognise and give effect to all equitable rights and liabilities appearing incidentally in the course of any action or matter. See CHANCERY.

Equity also signifies an equitable right, that is, a right enforceable in a Court of equity; hence, a bill of complaint which did not show that the plaintiff had a right entitling him to relief was said to be demurrable for want of equity; and certain rights now recognised in all the Divisions of the High Court are still known as "equities" from having been originally recognised only in the Court of Chancery. See EQUITY OF REDEMPTION; EQUITY TO A SETTLEMENT.

Equity also denotes a right or obligation incident to a property or contract as between two persons, but not incident to the property or contract from its own nature. In this sense the word is generally used in the plural—"equities"—and is chiefly of importance with reference to assignments of choses in action, the rule being that where there is a chose in action, whether it is a debt or an obligation, or a trust fund, and it is assigned, the person who owes the debt or obligation, or has undertaken to hold the trust fund, has, as against the assignee, exactly the same equities that he would have as against the assignor, or it may be expressed in the converse manner, that the assignee takes the chose in action subject to the same equities as those to which it was subject in the hands of the assignor. Thus, a debt is due from B to A, but there is also a debt due from A to B, which B might set off in an action by A. In this state of things A assigns the first debt to C, without telling him of the set-off. B is entitled to the set-off as against C. Again, if B has contracted to pay a sum of money to A, but the contract is voidable on the ground of fraud or misrepresentation, and A assigns the contract to C, who does not know the circumstances that render it voidable, then B may avoid the contract as against C.

In the law of bills of exchange, a distinction is drawn between "equities attaching to the bill itself" (such as an agreement between the original parties to the bill that in certain events the acceptor shall not be held liable) and "collateral equities," such as set-off. As a rule, a bill of exchange in the hand of a *bonâ fide* holder for value is not subject to the equities between prior parties, but in the case of a bill negotiated when overdue, the holder takes it subject to "any defect of title affecting it at its maturity (Bills of Exchange Act, 1882, s. 36 (2)), that is to say, to the "equities attaching to the bill," which expression includes, for instance, an agreement not to negotiate, but does not include any collateral equities, such as right of set-off or absence of consideration. See NEGOTIABLE.

Equity Draftsman. See DRAFTSMAN.

Equity of Redemption is that right which a

mortgagor has to redeem the mortgaged property at any time until he has conveyed it to the mortgagee or until he has been foreclosed, or until his right is barred by the Statutes of Limitations, or until the property has been sold by the mortgagee under a power of sale. See further on this point under MORTGAGE; also CLOG ON EQUITY OF REDEMPTION.

Equity to a Settlement. Before the enactment of the Married Women's Property Act, 1882, where a husband became entitled in possession in right of his wife to property which before the Judicature Acts he would have been unable to recover by an action at law (say a legacy left to his wife by the will of a testator, or a share of personalty to which his wife had become entitled under a settlement), although *primâ facie* the husband was entitled to receive the property (so that upon the executor or trustee paying him the wife's legacy or share of personalty, the husband's receipt would be a good discharge), yet if the intervention of a Court exercising equitable jurisdiction was in any way called into action, whether by the husband to claim the property, or by the wife to enforce her equity, the Court only allowed the husband to receive the property subject to what was called the wife's right or equity to a settlement; that is to say, unless the wife expressly waived this right or equity, the Court would inquire into all the circumstances connected with the marriage (*e.g.*, whether the husband had made a settlement on his wife, how much of her property he had already received, what was his pecuniary position, whether the husband and wife were living together or apart), and would upon a consideration of all the material facts, decide how much of the property (if any) should be paid to the husband, and how much (if any) should be settled on the wife.

The question as to an equity to a settlement cannot now arise at all in the case of a woman married on or after 1st January, 1883, for she holds her property as a *feme sole* (Married Women's Property Act, 1882, s. 2); and in the case of a woman married before that date, it can arise only as regards property her title to which, whether vested or contingent, and whether in possession, reversion or remainder, had accrued before that date, for (*ib.*, s. 5) all property acquired by her after that date is held by her as a *feme sole*. The question is now, therefore, of historical rather than of practical interest.

Erasure. See ALTERATION.

Erles. See ARLES.

Errant. The justices in eyre (q.v.) were formerly described as errant, that is to say, itinerant.

Error. In the old common law practice in civil actions, error was some mistake in the foundation, proceeding, judgment or execution of an action in a Court of record, requiring correction either by the Court in which it occurred (in case of error in fact), or by a superior Court or Court of error (in case of error in law). To " bring error " was to apply for the rectification required. Error in fact was some mistake in the process (*e.g.*, where an infant appeared by attorney instead of by guardian), while error in law was a mistake in the judgment, such as might have formed the foundation for a demurrer, motion in arrest of judgment, etc. Errors in law were either common (*e.g.*, that the judgment was given for the plaintiff instead of for the defendant), or special, which was where some matter appeared on the face of the record which showed the judgment to be erroneous.

Before 1875 error lay from inferior Courts of record to the King's Bench; from the superior Courts of law it lay to the Court of Exchequer Chamber (q.v.) and thence to the House of Lords. At an earlier time, proceedings in error in the House of Lords were known as " error in Parliament." Before the statute 27 Eliz. c. 8, error from the King's Bench lay direct to the House of Lords.

Proceedings in error in civil cases were abolished, and a more simple mode of appeal was substituted in 1875 (Judicature Act, 1875, Ord. 58, in Sch. I.), except in appeals to the High Court from inferior Courts proceeding according to the course of the common law. In those cases the old practice still applies, and the plaintiff in error (the appellant) is therefore obliged to " assign errors," that is, specify the defects complained of in the judgment of the Court below; the defendant then delivers either a joinder in error, or a plea to the assignment of errors, or a demurrer, and so on until issue is joined, when the case is set down for argument. This procedure is, however, practically obsolete.

Appeals in criminal cases were also brought by proceedings in error, namely, by writ of error (q.v.); the plaintiff in error (that is, the prisoner or accused) assigned or indicated the errors of which he complained in the indictment. The writ of error was abolished in criminal cases by the Criminal Appeal Act, 1907 (7 Edw. 7. c. 23), s. 20 (1), but this alteration in the law is of little substantial effect, for where error formerly lay, an appeal

under that Act now lies. See ERROR, WRIT OF; JOINDER.

Errores ad sua principia referre, est refellere (*3 Inst.* 15). (You refute errors if you go back to their origin.) This is Coke's marginal note to a disquisition in which he shows that whoever wrote the report in the Year Book of 2 Hen. 4, fo. 25, had not read the record of the case.

Error fucatus nudâ veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error (2 *Rep.* 73). (Painted error often appears more probable than naked truth; and again and again conquers truth by reasoning.)

Error qui non resistitur, approbatur (*Doct. and Stud. c. 70*). (He who can rectify a mistake, but does not rectify it, is deemed to have acquiesced.) See CONSENSUS TOLLIT, ETC; QUI NON OBSTAT, ETC.; QUI NON IMPROBAT, ETC.

Error, Writ of. In criminal cases this was an original writ issuing from the Petty Bag Office in Chancery, and directed to an inferior Court (*e.g.*, the Central Criminal Court or quarter sessions), requiring them to send the record and proceedings on an indictment in which judgment has been pronounced to a superior Court for review. It lay for every substantial defect appearing on the record for which the indictment might have been quashed, or which would have been fatal on demurrer, or in arrest of judgment, provided such defect was not cured by verdict; thus it lay on an indictment for perjury in which it did not appear that the alleged false oath was taken in a judicial proceeding (see AID; ARREST OF JUDGMENT; DEMURRER; QUASH). It also lay to reverse an outlawry.

Writ of error was formerly the mode by which appeals from certain inferior Courts of record (proceeding according to the course of the common law) were brought to the Court of Common Pleas. See ERROR; FALSE JUDGMENT.

Erthmiotum. Used in Leg. Hen. 1, c. 57, as meaning a meeting of neighbours to adjust local disputes.

Escambio. The Statute of Westminster, 5 Rich. 2, st. 1, c. 2, forbade the exportation, except under royal licence, of gold and silver. This licence, which was given in connection with bills of exchange, was called an escambio. The enactment of Rich. 2 was repealed by the statute 59 Geo. 3, c. 49, s. 11, and again by the S. L. R. Act, 1863.

Escape. Voluntary escape is the offence committed by a person who knowingly, and with intent to save him from trial or execution, permits any person in his lawful custody to regain his liberty otherwise than in due course of law. The offence is a common law misdemeanour, punishable, if the offender is an officer of the law, with fine, or, if he be a private person, with fine or imprisonment or both: but the offender, if the prisoner was a felon, would be an accessory after the fact, and, if more than one person was concerned in the escape, there would clearly be a conspiracy indictable at common law. Aiding the escape or attempted escape of a prisoner is also punishable under various statutes, as to which see *Archbold* (25th ed.) pp. 1113-16.

Negligent escape is the misdemeanour committed by a person who by the neglect of any duty, or by ignorance of law, permits a person in his lawful custody to regain his liberty otherwise than in due course of law. It is punishable at common law by fine or imprisonment; but there is no modern instance of an indictment for the common law offence. If a sheriff allowed a person in custody under a *ca. sa.* to escape, he was liable to the plaintiff for the amount of the judgment debt.

Where a prisoner escapes from prison without using force he commits a common law misdemeanour punishable with fine or imprisonment or, if he was in custody on a criminal charge (Criminal Procedure Act, 1851, s. 29) with both fine and imprisonment and the imprisonment may be with hard labour.

As to the offence committed by a prisoner who escapes from prison by force, see PRISON-BREACH.

Under the Vagrancy Act, 1824, s. 5, anyone committed under that Act can be dealt with as an incorrigible rogue if found at large before being discharged in course of law: and under the Transportation Act, 1824, s. 22, and the Penal Servitude Act, 1857, s. 3, persons under sentence of penal servitude who are found at large without licence are guilty of felony. See RESCUE; PRISON-BREACH.

Escape Warrant. Under the statutes 1 Anne, st. 2, c. 6, and 6 Anne, c. 12, ss. 1-4, if any person who had been committed to the Queen's Bench or the Fleet Prison was unlawfully at large, then any judge of the superior Courts at Westminster, who had cognizance of the proceeding in which the prisoner had been committed, could issue a warrant—popularly known as an escape warrant—addressed to all mayors, sheriffs and constables, and commanding them to arrest the prisoner and to take him to the debtors' prison of the place at which he was arrested.

Escapio quietus. This, anciently, meant one who by charter was excused the punishment imposed on those whose cattle wandered unlawfully into forest land.

Escheat takes place when by accident lands fall to the lord of whom they are holden, or to the Crown. It is derived from the feudal rule, that where an estate in fee simple comes to an end, the land reverts to the lord by whose ancestors or predecessors the estate was originally created. At the present day, seignories in freehold land are of no practical value, and the evidence of them has generally been lost; so that where an escheat takes place the land in almost all cases goes to the Crown as the ultimate lord of all lands in England.

"An escheat," says Coke, "doth happen two manner of wayes—*aut per defectum sanguinis, i.e.* for default of heir; *aut per delictum tenentis, i.e.* for felony." Escheat for default of heirs, as may be imagined, seldom occurs, almost the only case being where a bastard dies intestate without children or other issue. Under the Intestates Estate Act, 1884, s. 4, the law of escheat applies to any estate or interest whether legal or equitable in any incorporeal hereditament and to any equitable estate or interest in any corporeal hereditament: until 1884 such estates or interests did not escheat. Escheat *propter delictum tenentis* took place where a person was outlawed for felony, upon which his blood was corrupted; that is to say, he became incapable of holding land, or of inheriting it, and it therefore escheated to the lord; but outlawry (q.v.), though still possible, is quite obsolete. Formerly judgment of death for felony caused an escheat in the same manner as outlawry; but this was abolished in 1870 (see ATTAINDER). The rule that a person could not trace descent to land through an ancestor who has been attainted of treason or felony, so that the land escheated to the lord, had been abolished by the Inheritance Act, 1833, s. 10. There was no escheat of gavelkind lands for felony. See CONSUETUDINE, etc.

Escheat is not properly a purchase in the technical sense of the word, for the land thus acquired by the lord descends as the seignory would have descended, into the place of which it comes. See PURCHASE.

The word is derived from the Norman French *eschete*, from *escheoir*, to fall (in the sense of a windfall), which again was derived from the Latin *cadere*.

See SEIGNORY; TITLE; FELONY; FORFEITURE; INQUEST OF OFFICE.

Escheator. This, says Coke, is "an ancient officer, so called because his office is properly to look to escheats, wardships, and other casualties belonging to the crowne." The office is obsolete since the abolition of the Court of Wards and Liveries (q.v.) (see INQUEST OF OFFICE.); and all statutes relating to escheators were abolished by the Escheat Procedure Act, 1887, which now governs the procedure as regards escheats and does not provide for the employment of escheators.

Anciently there was an escheator for each county, appointed by the Lord Treasurer. The inquest of office (q.v.) was held before him. After the Statute of Westminster I., c. 24 (1275) no lands could be "seized into the King's hands" before "office found," that is to say, before the jury found that there had been an escheat.

Before the banishment of the Jews in 1290, there was an officer known as the Escheator of the Jews. Down to 1271 the Jews were permitted to hold land, and the Escheator of the Jews had to look after escheats of lands held by them.

See PARCEL MAKERS; CAPITULA ESCAETRIE.

Eschekere. Norman French for Exchequer.

Escrow. This is a writing sealed and delivered to a stranger (*i.e.*, a person not a party to it) to be held by him until certain conditions be performed, and then to be delivered to take effect as a deed. It is said that, to make the writing an escrow, the word "escrow" must be used in delivering it; but at the present day a writing is an escrow if it is delivered in circumstances which show that it is to take effect only when such and such a condition has been performed. Apparently the word is derived from the Norman French *escrit*, which itself was derived from the Latin *scriptum*, a writing.

Escuage. Tenure by escuage was one of the varieties of tenure by knight's service. It imposed on the tenant the duty of accompanying the king to war for forty days, or of sending a substitute, or of paying a sum of money which was assessed by parliament after the expedition or "voyage royal." This payment was also called escuage, or escuage uncertain, to distinguish it from escuage certain, which was one of the services of which socage tenure might consist. Thus, if a man held land by the service of paying to his lord half a mark, or other fixed sum, for escuage, this was escuage certain, and the tenure was socage and not knight's service. See TENURE.

Escuage was abolished by the statute 12 Car. 2, c. 24, and had fallen into disuse long

before, for there is no instance of parliament's assessing it since the reign of Edward II.

The word is the Norman French form of the late Latin *scutagium*, which itself was a derivative of the Latin *scutum* (a shield). See SCUTAGIO HABENDO.

Esquire. Strictly speaking, the only persons entitled to the description of esquire are: (i) the eldest sons of knights, and their eldest sons in perpetual succession, and all the sons of baronets; (ii) the eldest sons of younger sons of peers in like succession; (iii) esquires created by the Crown's letters patent or other investiture, and their eldest sons; (iv) esquires by virtue of their office, such as justices of the peace and barristers at law and attorneys in colonies where every attorney is also a barrister; (v) foreign peers. Every Knight of the Bath has the privilege of creating three esquires at his installation. See ST. JOHN; ETC.

Essence of the Contract. A provision in a contract is said to be "of the essence of the contract" when compliance with it was known by both parties at the time of entering into the contract to be of such importance that performance of the contract without strict compliance with it may be of no avail; as where the subject-matter of the contract is required for immediate use, or is of a terminable or fluctuating character or value. Where a contract limits a time for the performance of an act, the promisor has the right of performing it within a reasonable time after that date, unless it appears that performance within the time was intended to be of the essence of the contract; hence it is usual in such cases to insert an express condition to that effect.

Essendi quietum de tolonio. A writ, claiming exemption from toll, which anciently lay for the citizens or burgesses of any city or town if toll was unlawfully demanded from them.

Essoin; Essoign. An excuse made for non-appearance in an action or suit. It lay in real, personal, and mixed actions. It was more or less in the nature of an application for time or for an adjournment. Thus there was the *essoin de ultra mare*, based on absence overseas, on which the defendant got forty days; the *essoin de malo veniendi*, or common essoin, based on illness occurring while coming to court; the *essoin de malo lecti*, also based on illness; and there were also other essoins. The first day of each term was the essoin day, or day for dealing with essoins. In the superior Courts essoins are now unknown. The statute 2 Will. 4, c. 39, made them inapplicable to personal actions; the Real Property Limitation Act, 1833, s. 37, abolished real actions; and the Law Terms Act, 1830, s. 6, had abolished the essoin day. Essoins are, however, still known in connection with certain proceedings in manorial courts.

See CASTING; FOURCHER; LICENCE TO ARISE.

Essoins, Statute of. A popular title of the statute 12 Edw. 2, st. 2. But there were many other statutes on the subject: see *Cay. Abridg. s.v. Essoins.*

Establishment of Dower. Jacob, citing Britton (q.v.) 102, 105, says that this meant "the assurance or settlement of dower, made to the wife by the husband, on marriage," and that assignment of dower meant "the setting it out by the heir afterwards according to the establishment."

Establishment of Wills. Formerly where the validity of a will disposing of real estate was disputed, or likely to be disputed, by the heir-at-law, or any other person, the only remedy open to the devisee was to bring a suit in equity against the person disputing the will, called a suit to establish the will, so as to prevent him from contesting it in future. In such a suit the execution of the will, and the other requisites to its validity, were proved (see DEVISAVIT VEL NON.) Under the Court of Probate Act, 1857, s. 62, probate in solemn form is conclusive as to the validity of the will as regards real estate; and proceedings to establish wills in Chancery have consequently been obsolete since 1857.

Estate. In its widest sense, "estate" denotes the condition or circumstance of a person or a class of persons; hence its use in the expression "the three estates," or estates of the realm; that is, the lords spiritual, the lords temporal, and the commons of England. See PARLIAMENT.

More usually, however, "estate" signifies—(i) the condition or circumstance in which a person stands with regard to property in which he has an interest, and, by extension, (ii) the interest itself. In this sense, "estate" means certain varieties or modes of ownership, especially in land, the rule being that no person can be the absolute owner of land in England; in theory, he can only have an estate or limited interest in it. See TENURE.

These limited interests are of the following kinds:—

(I.) Where a person has such an estate in property that he is entitled to the possession or enjoyment of it (either in present or in future) against all the world, or against all

the world except one or more specified persons, he is said to have a legal estate in it, as opposed to an equitable or beneficial estate (*infra*). He may be entitled to it for his own benefit, or as trustee for someone else. (See TRUSTEE.) Legal estates are divisible as follows:—

(A) Estates in land of freehold tenure:

With reference to their quantity, or the extreme limit of their duration, estates are either freehold (q.v.) or less than freehold. Estates of freehold again are either (a) estates of inheritance, which include estates in fee simple, estates tail, and estates in frankmarriage (see those titles); or (b) estates not of inheritance, which are either (i) conventional, *i.e.*, created by the act of the parties, including estates for life and estates *pur autre vie* (see TENANT FOR LIFE; QUASI-TAIL); or (ii) legal, that is, created by construction or operation of law; to this class belong the estates of a "tenant in tail after possibility of issue extinct," and of tenants by the curtesy, and in dower (q.v.). Estates less than freehold are either (a) certain, namely, estates for years (see TENANT FOR YEARS; TERM), or (b) uncertain, namely, estates at will, by sufferance, *statute merchant* (q.v.), *statute staple* (q.v.) and *elegit* (q.v.), and a few other interests without specific names, *e.g.*, under a devise of land to executors to pay debts. See CHATTELS.

With reference to their qualities, estates are either absolute, determinable, or conditional. An estate is said to be absolute when nothing but its quantity is indicated; thus, a conveyance to a man and his heirs gives him a fee simple absolute. An estate is determinable when by the terms of its limitation it may either continue as long as if it were absolute, or determine before that period; thus, a conveyance to A. during her widowhood, gives her an estate for life determinable on her marrying again. A conditional estate is one which has a condition annexed to it, which may defeat it before its natural termination; familiar instances of conditional estates are those created by mortgage, and the estate of a lessee under an ordinary lease with a proviso for re-entry on non-payment of rent, &c. As to the various kinds of conditions, see that title. Estates which depend for their creation on the performance of a condition precedent are not generally called conditional estates, but contingent remainders or executory interests (q.v.). Estates in fee are subject to a peculiar division with reference to conditions, as to which see FEE; LIMITATION.

With reference to the time of their enjoyment, estates are either in possession or expectancy. An estate in possession (or an immediate estate) gives a present right of present enjoyment, whilst an estate in expectancy is one which cannot be enjoyed until a future time. An estate of freehold is said to be in possession, although it is subject to an existing prior chattel interest. Estates in expectancy include reversions, remainders and future interests (q.v.). Every estate which precedes a reversion or remainder is also called a particular estate; thus, if land is granted to A. for life, with remainder to B. and his heirs, A. has a particular estate, and B. a reversionary estate.

With regard to the certainty of their enjoyment, estates are either vested or contingent. An estate is said to be vested in possession when the tenant has a present right to the present enjoyment; vested in interest, when he has a present fixed right to the future enjoyment; and contingent, when his right of enjoyment is to accrue on an event which is uncertain; in other words, when he has an estate in expectancy, which may or may not take effect in possession. See REMAINDER; REVERSION; EXECUTORY INTEREST; VEST.

An estate held by one person alone is called an estate in severalty, or in sole tenancy; estates held by two or more persons together are of the following kinds: tenancy by entireties, coparcenary, joint-tenancy, and tenancy in common. See those titles.

B. Customary estates are those which exist, by virtue of a custom, in land forming part of a manor, as in the case of copyholds and customary freeholds (q.v.). As a rule, they are similar to estates in freeholds: thus a copyholder may have a customary fee simple, or an estate for life or for a term of years or in joint tenancy, etc.; and, if there is a special custom to that effect, a customary estate tail; if there is no such custom, then a gift of land to A. and the heirs of his body creates a customary fee simple conditional at the common law. See FEE.

II. Equitable estates are those which were formerly recognised only in Courts of equity. (See EQUITY; EQUITABLE.) The main differences between legal and equitable estates are that the latter can exist to a certain extent in personalty as well as realty, and that they are free from many of the restrictions and incidents attached by the common law to legal estates in land. Equitable estates may be divided as follows—(1) those which are analogous to legal estates, *e.g.*, equitable

estates in fee simple, in tail, for life, in joint tenancy, etc. In these cases the legal estate in the property is vested in one person, and the beneficial or equitable estate in another; as where land or stock is given to trustees upon trust for A. and B. during their lives, and, after the death of the survivor to C.; here A. and B. have an equitable joint life estate or interest, and C. has an equitable reversion or reversionary interest: (2) those having no corresponding estates at law, *e.g.*, equities of redemption.

"Estate" also signifies "property": thus we speak of real and personal estate, of partnership estate, trust estate, a married woman's separate estate, etc., especially with reference to questions of administration, as in the case of the estate of a deceased person, a bankrupt, or a dissolved partnership. See ASSETS.

From its use in these cases, "estate" has acquired the sense of a juridical or fictitious person, as when we say that a debt is due to the estate of a bankrupt or deceased person, or speak of an estate being insolvent, or of its being a co-contractor in a business. The idea is, that the estate represents or continues the *persona* of the individual to whom it belonged.

The word is the English form of the Norman French *estat*, which itself was derived from the Latin *status*. "Estate" was formerly also a verb active, meaning to create, limit, or grant an estate.

Estate at Will; Estate for Life, etc. See TENANT AT WILL; TENANT FOR LIFE, ETC.

Estate Clause. Down to 1881 it was customary to insert in every conveyance after the grant of the parcels (q.v.) and the general words (q.v.) the following words: "And all the estate right title interest claim and demands of the grantor unto and upon the said premises." Even before 1881 these words—known as the estate clause—had no effect in law: nothing passed under them which would not pass without them; and now they are omitted in reliance on the Conveyancing and Law of Property Act, 1881, s. 63, which enacts that every conveyance shall pass all the estate, etc., of the grantor unless a contrary intention be expressed.

Estate Duty. The expression "estate duty" was used in the title of the tax known as temporary estate duty (q.v.). But the expression by itself now means the tax imposed by the Finance Act, 1894, s. 1, upon the principal value of all property (except such property as is expressly declared by that Act to be exempt), whether real or personal, settled or not settled, which passes on the death of any person dying after 1st August, 1894. For the property to which estate duty does not apply, see ss. 2 (2) (3), 3, 15, 16, 21, and VOLUNTARY. The duty applies to the realty and personalty abroad of everyone with British domicile; and it applies also to all realty and chattels real within the United Kingdom of everyone, no matter what be his domicile. For the purposes of the duty, property, whether real or personal, is deemed to "pass at death" on the happening of any of the events which made account duty (q.v.) payable (Finance Act, 1894, s. 2). Probate (q.v.) and account duty (q.v.) are not payable on any property upon which estate duty has been paid (s. 1, Sch. I. (1)).

The duty originally ran from 1 per cent. on estates exceeding £100 and not exceeding £500—it is not payable on estates not exceeding £100 (s. 8 (1))—up to 8 per cent. upon estates exceeding £1,000,000 (s. 17). Even the highest rate could be provided for by life assurance; and the duty, in fact, originally was a species of deferred income tax. Now (see Finance Act, 1919 (9 & 10 Geo. 5, c. 32), s. 29, Sch. III.) the duty is still 1 per cent. on estates exceeding £100 and not exceeding £500; but the 8 per cent. maximum rate of the year 1894 is reached on estates exceeding £25,000 and not exceeding £30,000; the rate on estates exceeding £1,000,000 and not exceeding £1,250,000 is 30 per cent. instead of the 8 per cent. payable in 1894; and there is a maximum rate of 40 per cent. payable on estates exceeding £2,000,000. In the case of large estates the duty is in fact no longer a tax which can be provided for out of income.

Some slight relief is given by the Finance Act, 1914, s. 13, under which some reduction in the amount of duty payable is allowed where the estate is of a value only slightly exceeding the amount which is the dividing line between two rates of duty. Thus, where the value is £25,010, duty will not be at the full 8 per cent payable (see *ante*) on estates exceeding £25,000. And under s. 15 of the same Act, where duty is payable a second time within a year on land or on a business, it is reduced by 50 per cent., and there are progressively smaller reductions where the second payment becomes due within two, three, four, or five years of the first death. See TIMBER.

Estate Tail, or an estate in fee tail, is an estate in lands or tenements, created by a conveyance or devise to a person and his descendants, or the "heirs of his body," as they are technically called (see HEIR). Such an estate will, if left to itself, descend on the

death of the first owner to his children, grandchildren and more remote descendants, but not to his ascendants or collateral heirs; so that if he dies without issue, or any of his descendants die without issue, and there is no other descendant of the first owner living, the estate will, if left alone, come to an end, and the land will pass to the reversioner or remainderman. The owner for the time being of such an estate is called a tenant in tail.

An estate tail may be either general, as where land is given to A and the heirs of his body without more, in which case it descends to such of his heirs as are descended from him in the same manner as an estate in fee simple descends to the issue of the last purchaser: or special, when it is restrained to certain heirs of his body, as where land is given to B and the heirs of his body by a particular wife; here none can inherit but such as are his children by that particular wife, or descended from his children by her.

Each of these kinds may also be either in tail male, where the land is limited to the heirs male of the donee, so that it cannot descend to any but males who can trace their descent through male descendants from the donee (that is, to sons, sons of sons, and so on): or in tail female, where it can only descend to females and female descendants of females (daughters, daughters of daughters, and so on). Accordingly, a man may have an estate in tail male special, that is, descendible only to his heirs male by a particular wife, or the like.

Where land is given to two persons and the heirs of their bodies, then if they can by any possibility marry, either immediately or at a future time, they have an estate in special tail, limited to their own issue. If there is no possibility of their marrying, they have a joint estate for life and several inheritances in tail, that is, the land is divided on the death of the survivor, one-half going to the issue of each tenant for life, and the issue are tenants in common in tail.

Estates tail in freehold land are derived from the Statute of Westminster the Second (13 Edw. 1), called *De Donis Conditionalibus*. Before this statute, a gift of land to a man and the heirs of his body operated to create an estate in fee conditional on his having issue; as soon as he performed the condition by having issue, his estate practically became an absolute estate in fee simple (see FEE). The statute *De Donis* enacted that in such cases the land should go to the issue of the donee, or, on failure of his issue, should revert to the donor. The Act only applies to lands and tenements, and, therefore, does not include such hereditaments as annuities, which are neither lands nor tenements. See ANNUITY.

In course of time modes were invented of barring estates tail by means of fictitious proceedings called fines and common recoveries (see those titles), so that the estate of a tenant in tail might be converted into a fee simple absolute not only against his issue, but also against the donor or reversioner in tail. By statutes passed in the reigns of Henry VIII. and subsequent sovereigns, estates tail were further assimilated to estates in fee simple, and now by the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), every tenant in tail may, by a disentailing assurance (q.v.), bar the entail as against his own issue, and may, with the consent of the protector of the settlement (if any), bar it as against the reversioner in tail, and thus convert it into an estate in fee simple. See ENLARGEMENT; PROTECTOR.

As to the powers of tenant in tail to lease, see SETTLED LAND.

The entail of copyholds depends upon the custom of each manor. In some manors there is no custom to entail, and in these manors a surrender of copyholds to the use of A and the heirs of his body gives him a conditional customary fee, corresponding to a fee simple conditional at the common law (see FEE). In some manors there is a custom to entail, so that a surrender to the use of A and the heirs of his body gives him a customary estate tail, which may be barred by a simple surrender, the consent of the protector, if any, being entered on the court rolls.

An equitable entail is where lands or tenements are vested in trustees in trust for a person as tenant in tail. Such an entail may be barred in the same manner as an ordinary entail. See DISENTAILING DEED.

A *quasi* entail at law is where an estate *pur autre vie* is given to a man and the heirs of his body: as if land held during the life of A is given to B and the heirs of his body. In such a case, B may bar the *quasi* entail by a simple deed of grant; if he dies in the lifetime of A without having done so, the land descends to the heir of his body as special occupant. (See OCCUPANT.) A customary *quasi* estate tail in copyholds is similar.

A *quasi* estate tail in equity is where land held on lease for lives with a covenant for perpetual renewal is given to a person and the heirs of his body: it may be barred by deed *inter vivos*. A customary *quasi* estate tail in equity in copyholds is similar.

As an estate tail can now be barred or converted into an estate in fee simple by the owner, subject to certain restrictions, the object with which estates tail were invented, namely, as Coke puts it, "to preserve the inheritance in the blood of them to whom the gift was made," is not completely secured. The principal use of estates tail at the present day is to keep an estate in a family for two generations: thus, on the marriage of the owner of an estate, it is generally settled on him for life, with remainder in tail to the eldest son of the marriage; when a son is born, he is tenant in tail, subject to his father's life estate, and when he attains twenty-one, he is able, with the consent of his father as protector (q.v.), to bar the entail: the father usually gives his consent on the terms of the estate being re-settled on the son for life, with remainder in tail to his issue, and so on. See SETTLEMENT; FRANKMARRIAGE; FORMEDON; BAR; DISENTAIL; FINE; RECOVERY; TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT; DESCENT; TENANT IN TAIL EX PROVISIONE VIRI.

Estates of the Realm. The Lords Temporal, the Lords Spiritual and the Commons. It is popularly believed that the three estates of the realm are the King, the Lords and the Commons; but this is a mistake.

Estoppel is an admission of so conclusive a nature that the party whom it affects is not permitted to aver against it or offer evidence to controvert it.

Estoppels are generally divided into three kinds—by matter of record, by deed, and *in pais*.

Estoppel by matter of record is based on the principle that a record imports such absolute verity that no person against whom it is producible shall be permitted to aver against it. The most important kind of estoppel by record occurs in the case of judgments (q.v.): thus, where A. wrongfully signed judgment against B., it was held that so long as the judgment stood B. could not dispute it, and that his remedy was to apply to the Court to set it aside. Other instances of estoppel by record occur in the case of letters patent, fines and recoveries, etc. See RECORD.

Estoppel by deed or specialty is based on the rule that no man is allowed to dispute his own solemn deed: hence, as a general rule, if a person executes a deed containing a recital or statement, he cannot afterwards deny the truth of it, or show it to be incorrect.

Estoppel by matter *in pais* occurs, says Coke, in the case of estoppel "by liverie, by entry, by acceptance of rent, by partition and by acceptance of an estate." The most important of these instances at the present day is the last, which occurs when a person has accepted a lease from one who has no title whatever to grant it; in such a case, neither the tenant nor anyone claiming under him can dispute the lessor's title; the tenant is therefore said to have an estate by estoppel, and the lessor a reversion in fee simple by estoppel, and if the lessor subsequently acquires an interest which, if he had had it before, would have enabled him to grant the lease validly, the interest is said to feed the estoppel, so that the lease is as effectual for all purposes as if the lessor had had a sufficient interest when he granted it. A licensee of a patent, etc., is similarly estopped from denying the patentee's right to the patent.

There are also many modern rules which may be referred to the doctrine of estoppel *in pais*: such are those that the acceptor of a bill of exchange is precluded from denying the drawer's handwriting; that a bailee cannot question the title of his bailor, etc., the general rule being that where a man by his words or conduct wilfully or by negligence causes another to believe in the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from denying the existence of that state of facts. It was, indeed, decided in 1827 that where a person draws a cheque in such a manner that the amount may be altered without difficulty, and it is altered by being increased, he cannot sue his banker for paying the increased amount, because he is estopped by his own negligence, but this decision, although never expressly overruled, is not now to be regarded as law. If a customer issues a cheque in a completed form, the bank will in general have to bear the loss occasioned by any increase fraudulently made in the amount, even though the cheque is drawn in such a way as to make alteration easy.

Equitable estoppel, or estoppel by acquiescence, occurs where a person by tacitly representing his own position to be more favourable to another person than it really is, has induced that other to alter his position on the faith of the representation being true. Thus, if a stranger commences to build on land, supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, the Court will not afterwards allow the real owner to assert his title to the land.

A person who has a public or *quasi* public status (such as the vicar of a parish) cannot waive or divest himself of the rights incident to his office by conduct which, in the case of a private person, would amount to estoppel.

Estoveriis habendis, De. Anciently, where a woman had been divorced *a mensa et thoro*, the writ *de estoveriis habendis* lay to enable her to recover her alimony.

Estovers. Every tenant for life or years of freehold land, unless restrained by agreement, may of common right take upon the land a reasonable quantity of wood for fuel, repairs, etc. This is called estover, or botes, which are sometimes divided into house-bote, for repairs of the house, fire-bote for taking fuel, plough-bote for making and repairing instruments of husbandry, and hay-bote for repairing fences (Anglo-Saxon, *hegge*; Norman French, *haye*, a hedge or enclosure). Copyholders' rights of estovers are sometimes subject to customary restrictions.

As to common of estovers, see COMMON. The word estover is derived from the old French *estovoir* or *estoveir*, that which is necessary. It was anciently used as meaning alimony or sustenance. See ESTOVERIIS HABENDIS, DE.

Estrays are such valuable animals as are found wandering in any manor or lordship, and no man knoweth the owner of them; after they have been proclaimed and kept for a year and a day without the owner appearing, the law gives them to the Crown; in most cases, however, they belong to the lord of the manor by special grant from the Crown. (See PREROGATIVE.) The only birds included are swans and cygnets. Animals *feræ naturæ* (q.v.) are included only when an ownership in them has been acquired at common law.

Estreat. Estreat (old French, *estrait*; Latin, *extractum*) originally meant a copy of a record of a Court. The word is now, however, used only in connection with fines, forfeitures and recognizances. If the condiction of a recognizance is broken, the recognizance is forfeited, and, on its being estreated, the cognizors become debtors to the Crown for the sums in which they are bound. Formerly recognizance was estreated (that is, extracted) by a copy being made from the original and sent to the proper authority to be enforced; thus, estreated recognizances in the superior Courts and Courts of Assize were sent into the Exchequer, while those before justices of the peace were sent to the sheriff, with writs of execution to enable him to levy the amounts. Now, where Parliament, the Supreme Court, or the assize Court is concerned, the estreat of recognizances, etc., is governed by the Fines Act, 1833, and the Queen's Remembrancer Act, 1859, under which the King's Bench Division and the King's Remembrancer take the place of the Court of Exchequer; and a discretion is given to the Court as to whether a recognizance shall be estreated or not, while the Treasury can compound or discharge a recognizance.

Estreat, at general or quarter sessions, except on the non-appearance of a defendant, is now effected under the Levy of Fines Acts, 1822 and 1823, the procedure being governed by the Criminal Law Act, 1826, s. 31. As to a defendant, his recognizance is forfeited at once on his failure to appear.

The procedure in case of estreat is complicated except at petty sessions, and cannot here be dealt with thoroughly. See *Archbold* (25th ed.), pp. 94-97.

As to the estreating, or, as it is there called, the forfeiture, of the recognizances with which Courts of summary jurisdiction are concerned —such as recognizances to be of good behaviour or to appear, entered into before justices—see the Summary Jurisdiction Act, 1879, s. 9 (1) (2).

Estrepe; Estrepement. Anciently *estrepe* meant to commit waste (q.v.) and *estrepement* meant waste. The writ, which subsequently was known only as the writ of waste, was also known as the writ of estrepement when Jacob wrote in 1739.

Et adjornatur. (And it is adjourned.) The words occur in the old law reports where a case was adjourned for further argument, etc.

Et de hoc ponit se super patriam. (And concerning this he puts himself upon his country.) Formerly, when a defendant traversed or denied the facts pleaded by the plaintiff he concluded his traverse (q.v.) in these words. See COUNTRY.

Ethelred, Laws of. See ANGLO-SAXON LAWS.

Et hoc paratus est verificare. (And this he is ready to verify.) The former method of concluding a plea in confession and avoidance (q.v.).

Et hoc petit quod inquiratur per patriam. (And he prays that this may be enquired into by his country.) These formerly were the words concluding a traverse (q.v.) in which the plaintiff traversed or denied the facts pleaded by the defendant. See COUNTRY.

Et inde producit sectam. (And thereupon he brings suit.) The declaration (q.v.) formerly concluded with these words.

Et sic ad patriam. (And so to the country.) Used in the Year Books as meaning that there had been an issue to the country (q.v.)

Eundo, morando, et redeundo. (In going, remaining and returning.) The phrase was used in connection with privilege from arrest for debt.

Evasive. A pleading is said to be evasive when, in contravention of Ord. 19, r. 19, it answers the pleading of the other party by a half-admission or half-denial or fails to answer the point of substance which has to be met. An evasive pleading is "embarrassing" within the meaning of r. 27 of the same order and may be struck out. See AMENDMENT.

Eventus varios res nova semper habet (*Co. Litt.* 379.) (An innovation produces various results); even, says Coke, if it be introduced by a judge. See PERICULOSUM, ETC.

Eviction is now a popular term, but formerly was known to the law as a term for turning a tenant of land out of possession, either by re-entry or by legal proceedings, such as an action of ejectment.

Evidence is means employed for the purpose of proving an unknown or disputed fact, and is either judicial or extra-judicial. Judicial evidence is that which is used on trials or inquiries before Courts, judges, commissioners, referees, etc., while extra-judicial evidence is that which is used to satisfy private persons as to facts requiring proof. An important kind of extra-judicial evidence is that known as conveyancers' evidence, namely, that evidence which by the practice of conveyancers is required in the investigation of the title to property, in proof of facts on which the goodness of the vendor's title depends: such are original title deeds, probates of wills, certificates of births, deaths and marriages, statutory declarations, etc. Evidence by statutory declaration is sometimes called declaratory evidence.

Judicial evidence is of the following kinds:—

I. Evidence is direct where the fact proved by it (the evidentiary fact) is the fact in issue, or the fact required to be proved; as where on a trial for murder a witness deposes that he saw the prisoner kill the deceased. Indirect evidence is where the existence of the fact in issue is inferred from the evidentiary fact. Such evidence is—(i) conclusive, when the existence of the fact in issue follows either by a necessary consequence of the laws of nature or from a rule of law (as where an *alibi* is proved, or the certificate of incorporation of a company is produced): or (ii) circumstantial or presumptive, where it only rests on a greater or less degree of probability; as where a person accused of a murder is proved to have in his possession the instrument with which the deceased was killed. Evidence which shifts the burden of proof is called *primâ facie* evidence. See PRESUMPTION; PROOF.

II. Real evidence is that which is derived from any object belonging to the class of things: thus, footsteps in a field are real evidence that someone has been there; and the production of a mutilated document is real evidence of the mutilation. Documentary evidence is that derived from conventional symbols (such as letters), by which ideas are represented on material substances. A written contract is documentary evidence. Documents are divided into those which prove themselves (such as the *London Gazette*, probates of wills, certificates by registrars and other officials, etc.); and those which require personal evidence to prove them, such as agreements, deeds and other private documents. (See DOCUMENTS.) Personal evidence is that which is afforded by human beings, either by words or by signs intended to convey ideas. It may be personal either as to its source, as where a person deposes to a fact which he has seen (*e.g.*, an assault); or as to its instrument, that is, the means by which it is brought before the tribunal. The former class has some kinds with special names, of which opinion evidence, and its principal variety, expert or scientific evidence, are the most important. The latter class (evidence personal by reason of its instrument), also called testimony, is either oral or written. Oral evidence is that given by a witness *viva voce* before the tribunal. Written evidence is given either by affidavit or deposition (q.v.). In actions in the High Court, the evidence on the trial of the action is given orally in Court, unless the parties agree to have it taken by affidavit, and subject to the rule that the Court may order certain witnesses to be examined before an examiner or on a commission, or order a particular fact or facts to be proved by affidavit. (Ord. 37, r. 1.)

III. Original evidence is that which comes from its source without passing through any intermediate channel; as where a witness deposes to a fact within his own knowledge, or where a thing or an original document is produced to the tribunal. Original documentary evidence is called primary evidence: original real evidence is sometimes called immediate real evidence. Derivative, unoriginal, transmitted, second-hand or reported evidence, is that which is brought from its source through

an intermediate channel, as where a witness offers to prove a fact of the existence of which he has been informed by another person, or describes the condition of a thing or the contents of a document not produced; so a copy of a document is derivative evidence of the contents of the original. Derivative evidence is called—(i) hearsay or second-hand, when a witness makes a statement on the authority of another person (see DECLARATION); (ii) secondary or parol, when the contents of a document are brought before the Court either orally or by means of a copy; and (iii) reported, when the original source is real, as where the appearance of a thing is described by a witness. The distinction between original and derivative evidence is important with reference to the rule that where two kinds of evidence are accessible, the best evidence must be given; hence secondary evidence of the contents of a document is not admissible if the original can be produced. See NOTICE TO PRODUCE.

IV. Substantive evidence is that adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (that is, showing that he is unworthy of belief) or of corroborating his testimony. See DISCREDIT.

V. Evidence may be either intrinsic [internal] or extrinsic. Intrinsic evidence is that which is derived from a document without anything to explain it, or, as it is said, "without going beyond the four corners of the document." The terms "intrinsic" and "internal" are not common in practice. Extrinsic or parol evidence is evidence given to explain, vary or contradict a document, being derived from some other source than the document itself. It is called (i) explanatory evidence, where it is used for the purpose of ascertaining the meaning of the words actually used in the document, and (ii) evidence to prove intention, where the object is to show what was intended to have been, but has not been, written. The principal varieties of explanatory evidence are (a) evidence of usage to show that certain words in the document were employed in a technical sense understood by the parties, and (b) evidence of circumstances (tautologically, "surrounding" or "collateral" circumstances), as where evidence is given of the state of a testator's family, in order to explain the provisions of his will. Evidence of intention is as a rule only admissible to explain latent ambiguities: thus where a testator gives a legacy to William Smith, evidence is admissible to prove which William Smith he intended. See ADMISSION; AMBIGUITY; CONFESSION; DECLARATION; ESTOPPEL; EXAMINATION; FACT; NOTICE; PRESUMPTION; PROOF; RES GESTÆ; VOIR DIRE.

Ewage; Ewagium = Aquage (q.v.).

Exaction. Anciently this was the name applied in the law to the particular form of extortion (q.v.), which consisted of the taking, by an officer of the law, of any fee or reward where none at all was due.

Exactor regis. The King's collector of taxes. The term was sometimes taken as meaning the sheriff; but such use of the word was incorrect, and arose from the fact that the sheriff in early times was the person entrusted with collection of all moneys falling due within his bailiwick to the king.

Examination is the interrogation of a person on oath, and is either by written interrogatories (q.v.) or *viva voce*. The commonest instance of *viva voce* examination occurs in obtaining evidence from witnesses, who are examined in Court or before an officer of the Court or an examiner (q.v.). When the evidence of the witness is obtained by oral examination, this is called the examination-in-chief; when a witness has been so examined, or has made an affidavit on behalf of the party calling him, and is then examined on behalf of the opposite party in order to diminish the effect of his evidence, this is called cross-examination, and when he is again examined by the party calling him in order to give him an opportunity of explaining or contradicting any false impression produced by the cross-examination, this is called re-examination; it is necessarily confined to matters arising out of the cross-examination. See DEPOSITION; INTERROGATORY; TESTIMONY; VOIR DIRE.

Sometimes an examination is in the nature of a cross-examination, as in the case of a judgment debtor being examined as to what debts are owing to him, with a view to their being attached. See ATTACHMENT; GARNISHEE.

Every debtor against whom a receiving order is made must attend at a public sitting to be examined as to his conduct, dealings, and property; the examination, which is known as the public examination, is to be held after the debtor's statement of affairs has been submitted; it is to be on oath; every creditor who has proved, the official receiver, and the trustee (if any) may question the debtor; and the examination is not to be concluded until after the first meeting of creditors (Bankruptcy Act, 1914, s. 15).

Persons desirous of being admitted solicitors of the Supreme Court are as a rule required to

pass three examinations; namely, a preliminary examination in general knowledge (English, Latin, arithmetic, etc.) before being articled; an intermediate examination in elementary law after half the time under articles has been served, in order to ascertain the progress made by the articled clerk in acquiring the knowledge necessary for a solicitor; and a final examination to test the fitness of the candidate to transact the business of a solicitor. The examinations are conducted by the Law Society (Solicitors Act, 1877, s. 6). See ARTICLED CLERK.

Persons who have been members of the English Bar, or who have passed certain examinations at specified universities, or who have taken a degree in arts or law thereat, are exempt from the preliminary examination (Solicitors Act, 1922, s. 1). No one, unless exempted for special reasons, who is articled to a solicitor after December 31st, 1922, is to be admitted to the final examination if he has not attended a law school for one year in all (*ib.*, s. 2).

Examined Copy. See COPY.

Examiner is a person appointed by a Court to take the examination of witnesses in an action, that is, to take down the result of their interrogation by the parties or their counsel either by written interrogatories or *vivâ voce*. (See EXAMINATION.) An examiner is generally appointed where a witness is in a foreign country, or is too ill or infirm to attend before the Court. The examiner is to be one of the examiners of the Court unless the Court otherwise directs (Ord. 37, r. 39); and, except where the witness is outside the jurisdiction, it is not now the practice to appoint any special examiner. The examiners of the Court are barristers of not less than five years' standing and are appointed for a period of five years by the Lord Chancellor, who may at any time remove them (*ib.*, r. 40). They act in rotation (*ib.*, rr. 41, 42). Where the witness is abroad he may be examined before either one of the examiners of the Court or a special examiner.

The appointment of an examiner has now to a great extent superseded the issue of a commission. See COMMISSION; LETTERS OF REQUEST; DEPOSITION; MASTER.

Under the practice of the Court of Chancery before the Judicature Acts, the evidence to be used on the hearing of a cause was taken either by affidavit or deposition before the examiner attached to that Court; persons so giving evidence were subject to cross-examination and re-examination. This practice has been abolished.

Exannual Roll. Anciently this meant a list made out annually by the sheriff of moneys leviable by him which were in fact irrecoverable.

Ex antecedentibus et consequentibus fit optima interpretatio (2 *Inst.* 317). (Any part of a document is best interpreted by reference to what goes before it and to what follows it.) The meaning of words, of course, varies with the context.

Excambium. An exchange or payment in lieu of—formerly used in the phrase "an excambium for dower," which had to be paid when the land to which the widow was entitled could not be handed over to her.

Except; Exception. In conveyancing, an exception is a clause in a deed whereby the feoffor, donor, grantor, lessor, &c., excepts something out of that which he had granted before by the deed, so that the thing excepted does not pass by the grant. An exception must be part of the thing granted, and must be *in esse* at the time of the grant, while a reservation (q.v.) must be of some new thing issuing out of the thing granted.

In procedure, to except to a thing was formerly to object to or challenge it. Thus, to except to bail or sureties was to object to their sufficiency (see BAIL; JUSTIFICATION). Formerly, in Chancery practice, to except to an answer to interrogatories or affidavit of documents was to object to its sufficiency, which was done by applying to the Court or judge on summons or motion to consider the sufficiency of the answer or affidavit; if a defendant to a suit put in an insufficient answer to interrogatories, the plaintiff filed exceptions, that is, objections, to it, which were set down in the cause-list and argued in Court.

Formerly also a plea which, if established, was fatal to the case of the other side was known as an exception: see, *e.g.*, HORS DE SON FEE; NON SANAE MEMORIAE.

Where, on the trial of an action by a jury, the judge misdirects the jury as to the law, or admits or rejects evidence wrongly, the party aggrieved makes a motion for a new trial. (See DIRECTION; TRIAL.) This is a substitute for the old proceeding by bill of exceptions (q.v.).

Exceptio probat regulam [de rebus non exceptis] (11 *Co.* 41). (An exception proves the rule [concerning things not excepted].)

Exceptio semper ultima ponenda est (9 *Co.* 53). (An exception is always to be put last.) A rule governing pleadings in the time of James I.: it does not apply now.

Exceptis excipiendis. (All necessary exceptions having been made.)

Excess Profits Duty. A duty first imposed by the Finance (No. 2) Act, 1915, ss. 38-42, and Sch. 4, (1) upon such profits as a business established before 4th August, 1914, was making over and above the profits which it had been making before that date, and (2) upon such profits over and above a certain precentage on the capital employed as was being earned by businesses established since the same date. The duty was terminated by the Finance Act, 1921, ss. 35-42, after sundry variations as to its rate and otherwise had been effected by intermediate legislation.

Exchange, in its widest sense, is where A transfers property to B in consideration of B transferring property to A.

At common law an exchange is the mutual conveyance of equal interests in land or other hereditaments, corporeal or incorporeal; by equal interests is meant that the quantity of estate given and taken must be equal, e.g., an estate in fee simple in exchange for an estate in fee simple. Before the Real Property Act, 1845, an exchange was effected by the mere entry of each party on the land taken by him in exchange, without livery of seisin and without deed, except in the case of hereditaments lying in grant, or of lands situate in different counties; every exchange also implied a warranty, so that if one party was evicted from his newly-acquired land owing to a defect in the title, he could re-enter on the land originally held by him. But now by the Real Property Act, 1845, every exchange must be by deed, and the implied warranty has been abolished. Exchanges at common law had become practically obsolete by 1845, it having become usual even before that date to effect an exchange by mutual but separate conveyances in the form of ordinary deeds of grant. The same method, or one deed executed in duplicate, is still in use. By the Inclosure Act, 1845 (8 & 9 Vict. c. 118), provision is made for exchanges of land under the direction of the Ministry of Agriculture and Fisheries (q.v.) in cases where they have satisfied themselves by inquiries that the proposed exchange will be beneficial to the owners of the respective lands, and that the terms are just and reasonable. They thereupon make an order of exchange, which carries the arrangement of the parties into effect. An application for an exchange can be made by the person in possession of the lands (*ib.*, ss. 16, 147; Inclosure Act, 1854, s. 5), but it is not necessary that both parties should have estates equal in duration, for the effect of the exchange is simply to substitute one piece of land for another, so that if lands belong to A for life, with remainder to B, A can by obtaining an order of exchange, effect an exchange with C, a tenant of other lands in fee simple; then C's lands vest in A for life, with remainder to B. If the lands are not of equal value, the difference in value may be compensated by a perpetual rentcharge on the land which is of lesser value (Inclosure Act, 1857, s. 6); but no exchange may be authorised if the deficiency in value exceeds one-eighth of the less valuable property (*ib.*, s. 8). The Inclosure Commissioners (whose powers are now vested in the Ministry of Agriculture and Fisheries) were originally empowered to administer the Inclosure Acts.

An exchange of goods is a transfer of goods from A to B in exchange for a transfer of goods from B to A. Such a transaction, which hardly differs from a sale (q.v.), is more commonly called barter.

See Owelty of Exchange.

Exchange, Bill of. See Bill of Exchange.

Exchange (in ecclesiastical law). Any two incumbents may, with the requisite assent and upon compliance with the required formalities, exchange their benefices. But if either effects the exchange in consideration of receiving "any pension, sum of money or benefit whatsoever," then both the giver and the taker thereof are each liable, under the statute 31 Eliz. c. 6, s. 7, to forfeit double the amount or value thereof and also two years' profit of their benefices; and such forfeiture may be sued for by anyone, half of the forfeiture to go to the person suing and the other half to the Crown.

Under a series of statutes commencing with the Ecclesiastical Commissioners Act, 1840, an exchange of advowsons or of rights of patronage may be effected under a scheme of the Ecclesiastical Commissioners and an Order in Council. Such exchanges are sanctioned only if and in so far as they conduce to the better management of the Church.

Exchanges, Regimental. Under the Army Act, s. 155 (3), any person who negotiates, acts as agent for, or otherwise connives at any exchange in respect of which any sum of money or other consideration is given or received, is liable on conviction upon indictment to a fine of £100 or to imprisonment not exceeding six months and, if an officer, is liable on conviction by court-martial to be dismissed the service.

Exchequer is a public office, and formerly consisted of two divisions—the receipt of the

Exchequer and the Court of the Exchequer. The former manages the royal revenue, that is, it receives and keeps the public money, and sees that none of it is paid out except on proper authority. (See TREASURY.) Accordingly, all the principal revenues (e.g., those arising from the Customs, Inland Revenue, the Post Office, etc.) are paid into the Bank of England, to the credit of the Exchequer; and payments for the public service are made out of the fund thus formed. By the Exchequer and Audit Departments Act, 1866, the Audit Department (or office for auditing the public accounts) was consolidated with the Exchequer, and the two departments were placed under the management of a comptroller and auditor-general and subordinate officers.

The Court of Exchequer was one of the Courts into which the *Curia Regis* divided itself. By the year 1200 it had a separate existence; but the one body continued to collect revenue in addition to trying cases. The first Chief Baron was appointed in 1312, and from that date the Court had a separate existence. It was originally a Court having jurisdiction only in matters concerning the public revenue, e.g., in suits by the Crown against its debtors; but it afterwards acquired (by the use of fictitious pleadings—see FICTION) jurisdiction in actions between subject and subject. It was formally sub-divided into a Court of common law and a Court of equity; but by statute 5 Vict c. 5, its equitable jurisdiction (except in revenue matters) was transferred to the Court of Chancery. Under the Judicature Acts, 1873 and 1875, the jurisdiction of the Court of Exchequer, as a Court of revenue as well as a common law Court, was transferred to the High Court of Justice; the judges of the Court of Exchequer, and their successors, continued to form a division of the High Court, called the Exchequer Division, to which all causes which would formerly have been within the exclusive cognizance of the Court of Exchequer were assigned, until, in 1880, the three "common law" divisions of the High Court were merged into one. See SUPREME COURT; BARON.

The word "exchequer" is derived from the medieval Latin *scaccarium* (a chess board), from the chequered cloth, resembling a chess board, which covered the table on which, when certain of the king's accounts were made up, the sums were marked and scored with counters.

See RED BOOK OF THE EXCHEQUER; LIBER NIGER SCACCARII; CURSITOR BARON OF THE EXCHEQUER; TALLY; TELLER; CLERK OF THE PELLS; AUDITOR; CURSUS SCACCARII.

Exchequer Bills are bills issued by the government for the purpose of raising temporary loans, generally in anticipation of the supplies granted by Parliament, and occasionally for carrying on public works, etc.; they entitle the bearer (or the person named in each bill, if the blank left for that purpose is filled up) to the sum for which they are issued, to be paid at a time to be fixed by advertisement, with interest in the meantime. They are negotiable instruments. Their issue is regulated by the Exchequer Bills and Bonds Act, 1866, as amended by the Treasury Bills Act, 1877. They are not now much used, their place having to a large extent been taken by Treasury bills (q.v.). They are charged upon the Consolidated Fund (q.v.) (Act of 1866, s. 7).

Exchequer Chamber. The Court of Exchequer Chamber was a Court of error (that is, a Court of Appeal) from each of the three superior Courts of common law, and consisted of the judges of the two Courts other than that whose decision was being appealed against; that is, when error was brought from a judgment of the Queen's Bench, the Exchequer Chamber consisted of the judges of the Common Pleas and Exchequer, and so on. By the Judicature Acts the Exchequer Chamber was abolished and its jurisdiction was transferred to the Court of Appeal.

See HELL.

Exchequer of the Jews. This was a branch of the Exchequer, established about the year 1200, primarily for the purpose of supervising the money-lending business of the Jews. It was created in the interest, not so much of the Jew or of his debtor, as of the king, to whom the Jew, and all that the Jew might have, belonged in strict law. It managed all the king's transactions with the Jews; exacted from them escheats, forfeitures, reliefs and tallages (q.v.); decided disputes between Jews and Christians; and adjudicated in criminal cases affecting Jews. See CUSTODES JUDÆORUM.

Excise is properly a duty on certain commodities, charged in most cases on the manufacturer; such are duties on spirits, malt, tobacco, etc. There are also duties which, though not properly in the nature of excise, are classed under this head; such as the licences which are required to be taken out annually by those who manufacture or deal in certain goods, or carry on certain employments, and also what are more commonly

known as assessed taxes, being those payable by persons who use male servants, horses, carriages, motor cars and armorial bearings. (See LICENCE.) See COMMISSIONERS OF CUSTOMS AND EXCISE.

Exclusive. See APPOINTMENT; POWER.

Exclusive Jurisdiction was that jurisdiction of the Court of Chancery in which the common law had no share, as opposed to the concurrent jurisdiction in which law and equity equally shared. Since the Judicature Acts 1873-5, this exclusive jurisdiction as such has now theoretically ceased, the jurisdiction being now concurrent; but practically, the old exclusive jurisdiction continues exclusively in the Chancery Division. The jurisdiction comprised and comprises trusts, administration of assets, and such like.

Excommengement. This was the old law French for excommunication (q.v.).

Excommunication is an ecclesiastical punishment, being a censure (q.v.), whereby the person against whom it is pronounced is for the time cast out of the communion of the Church. It is said to be of two kinds—the lesser and the greater. The lesser excommunication deprives the offender of the use of the sacraments and divine worship: this sentence was formerly passed by judges ecclesiastical, on such persons as were guilty of obstinacy or disobedience in not appearing upon a citation, or not obeying the orders or decrees of the Court; but in these cases it is no longer applicable (Ecclesiastical Courts Act, 1813, s. 1). The greater excommunication is that whereby, according to ecclesiastical law, men are deprived, not only of the sacraments and the benefit of divine offices, but of "the society and conversation of the faithful." It can be pronounced only as a punishment or censure for an ecclesiastical offence. If the person does not submit within forty days after the sentence of excommunication, he may, under s. 3 of the Ecclesiastical Courts Act, 1813, be arrested and imprisoned for any time not exceeding six months upon the writ of *de excommunicato capiendo* (q.v., and see SIGNIFICAVIT); but such imprisonment is obsolete.

In some cases the Court has no discretion, but must pass sentence of excommunication if the offender is found guilty; as where a person in Holy orders is found guilty of smiting another in a church. This is sometimes called excommunication *ipso facto*. See BRAWLING.

Excommunication, as a punishment for contempt of the decrees of Ecclesiastical Courts, has been abolished, and that for contumacy (q.v.) substituted.

A minister in Holy orders is not required to say the Office for the Burial of the Dead at the interment of a person who dies excommunicate.

Excommunication, in the Church of England, is now of rare occurrence.

Excommunicato Capiendo, De, was a writ issuing out of Chancery and directed to the sheriff, commanding him to arrest and imprison a person who has been excommunicated. See EXCOMMUNICATION; SIGNIFICAVIT; CONTUMACE CAPIENDO, DE.

Excommunicato Deliberando, De. A writ which formerly lay to the sheriff for the liberation of an excommunicated person upon a certificate by the ordinary that such person had conformed to the ecclesiastical jurisdiction.

Excommunicato Recapiendo, De. A writ which anciently lay for the re-arrest of an excommunicated person who had unlawfully been released from prison.

Ex concessis. Literally, from things already conceded.

Ex contractu. The actions of account, annuity, assumpsit, covenant, debt, and *scire facias* all arose *ex contractu* (from contract), as does now the action which has replaced them. See the titles of these different actions and also ACTIONS.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus (*Bac. Max. Reg.* 15). (A wrong, in capital cases, is excused or palliated, which would not be so treated in civil cases.) Thus, in a civil action a wrong may be actionable whether it be done maliciously or not: in a criminal case a wrong may not be punishable unless it be done maliciously.

Ex debito justitiæ. A remedy which the applicant gets as of right. A remedy which may or may not be granted is called discretionary. Thus the writ of *mandamus* (q.v.) is a discretionary writ; the writ of *habeas corpus* (q.v.) is *ex debito justitiæ*.

Ex delicto. The actions which arose from tort (*ex delicto*) were trespass (whether *quare clausum fregit* or *de bonis asportatis*), case, trover, detinue, and replevin. See the titles of these different actions, and also ACTIONS.

Ex diuturnitate temporis omnia præsumuntur esse rite et solennitur acta (*Jenk. Cent.* 185). (From lapse of time, all things are presumed to have been done rightly and regularly.) See CONSUETUDO ET COMMUNIS ASSUETUDO, ETC.

Ex dolo malo non oritur actio. (No right of action can have its origin in fraud.) See DOLO MALO ETC.; EX TURPI CAUSA, ETC; NULLUS COMMODUM, ETC.

Exeat. (Let him go.) In the Church of England this means a permission from a bishop to a priest authorising him to leave the diocese, and, incidentally, to seek employment in another diocese. At Oxford and Cambridge it means leave of absence to an undergraduate.

Execute; Executed; Execution. To execute is to complete or carry into effect; execution is the act of doing so. Thus, to execute a deed is to sign, seal and deliver it (see DEED); and the Statute of Uses is said to execute a use when a use is carried into effect by being converted into a legal estate. (See USE.) As to executed contracts and trusts, see CONTRACTS; TRUST.

When a person makes an appointment under a power, he is commonly said to execute it, though the term "exercise" is more appropriate. In general, a power of appointment requires to be exercised with certain formalities, *e.g.*, by deed or by will; when there is an intention to exercise a power, but the formalities have not been complied with, the power is said to be defectively executed. In certain cases, and in favour of certain persons, the High Court (following the rules of the Court of Chancery) will aid or supply the defective execution of a power; that is, consider it as having been properly executed, notwithstanding a defect in the formalities, as where there is merely an agreement to execute it, or where it is executed by will instead of by deed; this is sometimes called an equitable execution. See also the Wills Act, 1837, as to the exercise of powers by will, and the Law of Property Amendment Act, 1859, as to the exercise of powers by deed.

To execute a judgment or order of a Court is to carry it into effect or enforce it. In actions in the High Court, judgments are principally enforced by writs called writs of execution, which direct the sheriff or other persons either to do what is required to perform the judgment (*e.g.*, to deliver possession of land to a successful plaintiff), or to compel the defendant or other person to do some act which he is required to do. (See the titles FIERI FACIAS; ELEGIT; DISTRINGAS; CAPIAS; POSSESSION; SEQUESTRATION; WRIT; RETURN.) In ordinary parlance, "execution" means execution to recover a debt, that being the most important kind, and hence a creditor or debtor, by or against whom execution has been issued, is called an execution creditor or debtor. See CREDITOR; DEBTOR.

Continuing execution is where the process continues until all that has been commanded to be levied is levied; as in the case of a *sequestrari facias*.

In some cases a judgment may be enforced by means formerly peculiar to Courts of equity, and hence called equitable execution. Thus, if a judgment debtor has an equity of redemption in land (an interest which could not be taken in execution at common law), the Court will appoint a receiver of the rents, profits and surplus proceeds of sale of the property for the benefit of the creditor.

There are also some other kinds of proceedings available to enforce or satisfy a judgment, which are hence usually treated of under the head of execution; such are charging orders, notice in lieu of *distringas* on stock, attachment of debts, etc. (see those titles).

The Railway Companies Act, 1867, s. 4, enacts that the rolling stock and plant of a railway company shall not be liable to be taken in execution; but a judgment creditor of the company may obtain the appointment of a receiver or manager of the company's undertaking; and the net income of the company is then applied in payment of its debts.

In criminal proceedings, judgment against a prisoner is executed by the sheriff, who causes him to be imprisoned, sent to penal servitude, hanged, or otherwise dealt with according to the sentence. The term "execution," however, is commonly applied to execution of judgment of death by hanging, which is now effected within the walls of the prison where the offender is confined. See CAPITAL PUNISHMENT.

To execute a writ is to obey the instructions contained in it: thus, a writ of *fieri facias* is executed by seizing and selling the goods of the debtor. (See RETURN.) Writs are executed either personally, that is, by the persons to whom they are directed, or by a substitute appointed by warrant (q.v.).

— **Executio est executio juris secundum judicium** (3 *Inst.* 212). (Execution is the execution of the law according to the judgment.) Coke cites this maxim in connection with the point that a sentence of hanging will not justify beheading.

— **Executio est finis et fructus legis** (*Co. Litt.* 289*b*). (Execution is the end and fruit of the law.) This is one of a number of maxims as to execution cited by Coke on the same page.

The execution referred to is the execution of civil process.

Executio juris non habet injuriam (2 *Inst.* 482). (The execution of the process of the law does no injury.)

"If an action be brought in a Court which has jurisdiction upon insufficient grounds or against the wrong party, no injury is thereby done for which an action can be maintained; . . . he is not to be esteemed a wrong-doer who merely avails himself of his legal rights. . . . On the other hand, if an individual, under colour of the law, does an illegal act, or if he abuses the process of the Court to make it an instrument of oppression or extortion, this is a fraud upon the law, by the commission of which liability will be incurred." (Broom, 8th ed., p. 103.) See ACTUS CURIÆ, etc.

Executione Facienda, De. Anciently a generic title for writs of execution generally. See, for instance, the next title.

Executione facienda in withernam, De. A writ anciently used in the same circumstances as the writ *Averiis captis in withernam* (q.v.).

Executione judicii. Anciently this was a writ issuing to an inferior Court requiring it to either execute its own judgment or to show some reasonable cause for non-execution.

Executor. An executor is the person to whom the execution of a will of personal estate, that is, the duty of carrying its provisions into effect, is confided by the testator. The duties of an executor are to bury the deceased, to collect the estate, and, if necessary, convert it into money; to pay the debts in their proper order, then to pay the legacies, and distribute the residue among the persons entitled. For these purposes he may bring actions against persons who are indebted to the testator, or are in possession of property belonging to the estate. Some of these things, however, can only be done by him after he has proved the will. (See PROBATE.) When several executors are appointed, and only some of them prove the will, these are called the proving or acting executors.

Married women and infants may be appointed and act as executors. In the case of an infant, however, letters of administration *durante minore ætate* require to be taken out to carry on the administration of the estate until he attains majority. See GRANT.

An executor nominate is one appointed expressly by the word "executor"; an executor according to the tenor of the will is one appointed by inference; for if by any words the testator recommends or commits to a person the rights and duties which appertain to the office of executor (as where he says, "I commit all my goods to the disposition of A.B."), it is equivalent to an express appointment.

An executor *de son tort* (*de son tort demesne*, of his own wrong) is one who, being neither executor nor administrator, intermeddles with the goods of the deceased, or does any other act characteristic of the office of executor. When a man has so acted, he renders himself liable, not only to an action by the rightful executor or administrator, but also to be sued by a creditor or legatee of the deceased. He has all the liabilities, though none of the privileges, which belong to the character of executor.

An executor is allowed a year to realise the testator's estate before being bound to distribute it. Consequently interest does not begin to run on legacies until after the expiration of a year from the testator's death, unless the will contains some special directions on the subject.

As to the payment of debts and distribution of the estate, see ADMINISTRATION; ASSETS. Strictly speaking, an executor is bound to satisfy all just claims on the estate before distributing it among the legatees and other beneficiaries, whether he has had notice of such claims or not, and also to provide for all future and contingent liabilities arising out of the testator's estate, such as calls on shares, rents and covenants under leases and the like. These responsibilities, however, have been considerably reduced by the modern statutes referred to *infra*.

Where a testator charges his real estate with the payment of his debts or legacies, and does not make any express provision for raising them, his executor may do so by sale or mortgage of the lands, unless the testator has devised them in such a manner that his whole estate and interest in them has become vested in trustees, in which case they are the persons to exercise the power of sale or mortgage (Law of Property Amendment Act, 1859, ss. 14-16). Before 1898, neither such implied or statutory power, nor any express power to sell real estate, could be exercised by an administrator, even if acting under letters of administration with the will annexed. But now, under the Land Transfer Act, 1897, s. 1, all real estate to which a testator is absolutely entitled, other than copyhold, devolves to the executor or administrator as if it were personalty: and the executor or ad-

ministrator has (s. 2 (2)) the same rights and powers regarding it that he has regarding personalty.

If an executor dies before the estate is completely administered, having by his will appointed an executor, the executor so appointed is also executor of the original testator. But if an executor dies without having appointed an executor, letters of administration *de bonis non* must be taken out. (See GRANT.) Frequently the office of trustee is combined with that of executor. See TRUSTEE.

Numerous powers have been conferred on executors during the last century by various Acts of Parliament, the principal of which are as follows:

Under the Law of Property Amendment Act, 1859, s. 29, where an executor or administrator has given such or the like notices for creditors and others to send in to him their claims against the estate of the testator, as would have been given by the Chancery Division of the High Court in an action to administer the testator's estate, then the executor may, at the expiration of the time named in the notices, distribute the assets without being liable for any claims of which he has not received notice: but this provision does not affect the right of any creditor or claimant to follow the assets into the hands of any person who may have received them (*e.g.*, a legatee). Notices to creditors under this section are given by advertisement in the *London Gazette* and the principal newspapers circulating in the places where the testator resided and carried on business.

Under s. 27 of the same Act, where an executor or administrator has assigned to a purchaser a lease held by the testator, he is not bound to set aside a fund to answer future claims under the lease, unless it contains a covenant or agreement by the lessee to lay out a fixed sum on the property at some future time, in which case he is bound to set aside a sufficient fund for the purpose. But this provision does not affect the right of the lessor to follow the assets of the deceased into the hands of the persons among whom they have been distributed.

Under s. 29 of the same Act, an executor, administrator or trustee may, without the institution of an action, apply by petition or summons to a judge of the Chancery Division, for the opinion, advice or direction of the Court on any question respecting the management or administration of the assets, and he is protected from responsibility if he acts upon the opinion, advice or direction thus given, provided it was obtained without misrepresentation or concealment. See ADVICE OF COURT.

Under the Trustee Act, 1893, s. 21, executors (and also trustees) are empowered to pay debts or claims upon any evidence they think sufficient, and to accept any composition or security for any debts due to the deceased, and to allow time for payment of any debts, and also to compromise, compound or submit to arbitration all debts, accounts, claims, etc., relating to the estate of the deceased, without being responsible for any loss occasioned thereby. See WILL; SYNDIC; RENUNCIATION.

If notwithstanding these provisions an executor cannot safely administer an estate without the supervision of the Court, he may institute proceedings in the Chancery Division for the administration of the estate, in which he will act in accordance with the directions of the Court, and thus escape responsibility. See ADMINISTRATION; ACTION or MATTER; DISCRETION.

Executory is that which remains to be carried into effect, as opposed to executed (q.v.). See BEQUEST; CONSIDERATION; CONTRACT; DEVISE; EXECUTORY INTERESTS; TRUST.

Executory Interests. The term "executory interests" includes all future estates and interests in land or personalty, other than reversions and remainders.

As to executory interests in land, they are created either under the Statute of Uses or by will. Executory interests under the Statute of Uses are created by springing or shifting uses, a common instance of which occurs in an ordinary marriage settlement. Thus, supposing A. to be the settlor, the lands are conveyed by him to the trustees B. and C. and their heirs, to the use of A. and his heirs until the intended marriage shall be solemnised, and immediately after the solemnisation thereof to the use of D., the intended husband, for life, and so on. Until the marriage takes place, A. continues to be tenant in fee simple of the land, and D. has an executory interest; it is not a contingent remainder, for the estate which precedes it, that of A., is an estate in fee simple. As soon as the marriage takes place, the seisin of the land shifts away from A., and vests in D. for his life.

Executory interests in land created by will are called executory devises. See DEVISE.

Executory interests in personalty are created either by conveyance *inter vivos* or by will; in the latter case they are sometimes called executory bequests, formerly executory devises. In the wide sense of the word, "executory interest" includes interests in personal property analogous to remainders and reversions in land; but such interests are sometimes called remainders and reversions, as if they were estates in land. Thus, if stock is transferred or bequeathed to trustees in trust for A. for life, and after his death to B., the interest of B. might be called either a remainder or an executory interest.

Executory interests must not transgress the rule against perpetuities, or the provisions of the Thellusson Act. See those titles.

Executrix is a female executor.

Exemplary. See DAMAGES.

Exemplification is an official copy of a document made under the seal of a Court or public functionary. Thus, an exemplification of a will or probate is a copy under the seal of the Probate Division of the High Court; an exemplification of letters patent, or of a private Act of Parliament, is under the Great Seal. An exemplification is admissible evidence to prove the original document. See COPY; INSPEXIMUS; MITTIMUS.

Exemplificatione, De. This formerly was a writ granted for the exemplification (q.v.) of an original record.

Exemption Order. See LICENCE.

Exemption, Writ of. This writ, also known as the writ of ease, lay for one seeking exemption from service on juries or in public offices.

Exequatur is a permission by a government to the consul of another State to enter upon the discharge of his functions in the country of the Government giving the exequatur. The Government which issues it may at any time withdraw it; and its issue is entirely discretionary.

Exercise is to make use of: thus, to exercise a right or power, is to do something which it enables one to do. A power of appointment is exercised by making an appointment under it. See ENJOYMENT; EXECUTION.

Exercituale. In the Laws of Edward the Confessor, four horses are described as an *exercituale*; and it has been suggested that the word meant a heriot paid in arms or other military equipment.

Ex facto jus oritur (2 *Inst.* 49). (The law is grounded on the facts.)

Exfrediare. Used in the Laws of Henry I. as meaning to commit a breach of the peace.

Ex gratia. (As of favour.) In contradistinction to "as of right."

Ex gravi querela. This was a writ which lay for one to whom lands or tenements in fee had been devised (within any city, town or borough in which lands were devisable by custom) and the heir of the devisor entered upon the land. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Exhibit. When it is wished to put a document or moveable thing in evidence by affidavit, a reference to it is made in the affidavit, as being marked in some way for identification, and as having been produced to the deponent at the time of his swearing the affidavit, R. S. C., Ord. 38, r. 23: the document is marked in the way mentioned in the affidavit, generally with some letter of the alphabet; a certificate referring to the affidavit is also written on it, and is signed by the commissioner or person before whom the affidavit is made, and (*ib.*, r. 24) must bear the short title of the cause or matter. The document is thenceforth called an exhibit, from the Latin *exhibere*, "to produce or show." It is not filed with the affidavit.

Exhibition. Jacob, referring to the period before the Reformation, says that this was "an allowance for meat and drink" made to a man by an appropriator (q.v.).

Exigent, or **Exigi facias,** was a judicial writ used in obtaining the outlawry of a person; it required the sheriff to exact the defendant, *i.e.*, to call on him at five successive sheriff's County Courts (or, in the city of London, at five successive hustings) to appear and answer the plaintiff; if he made default after being exacted five times, he was outlawed. The writ might still possibly be used in outlawry in criminal proceedings. See OUTLAW.

Exigenter; Exigendary; Exigentarius de banco communi. Officers of the Courts of Common Pleas and King's Bench who performed duties in connection with the writ of *exigent* and other matters connected with outlawry. The Exigenter of the Common Pleas is mentioned in the statute 18 Hen. 6, c. 7, which deals with abuses of the process of outlawry. Jacob states that in the middle of the eighteenth century there were four Exigenters in the Common Pleas, but it appears from the Commons Committees Reports (1803), Vol. 13, p. 301, that in the Common Pleas in 1798 there was only one, whose office yielded no profit, while (*ib.* p. 280) in the King's Bench there was another, whose office (executed by deputy) was worth about £300 a year clear.

The office was abolished in both Courts by the Superior Courts (Officers) Act, 1837.

Exilium. A spoiling. *Exilium*, according to Fleta, meant the injury done to tenants when their tenure was wrongly determined. *Vastum* (waste) and *destructio*, each of which also meant a spoiling, applied to houses, gardens and woods.

Exitus. This meant (1) Issue or offspring; (2) the yearly rents and profits of lands and tenements; and (3) a joinder of issue or close of pleadings.

Exlegaliticus. In Anglo-Saxon times this meant an outlaw.

Ex-lex. An outlaw; see Bracton, lib. 3, c. 11.

Ex maleficio non oritur contractus. (A [valid] contract cannot arise out of an illegal act.) Compare Ex DOLO, ETC.

Ex mero motu. (Of his own accord.) The words were formerly used in royal grants and patents, in order to show that every such document was spontaneously done by the King. They are still applied to such action as a Court may take of its own initiative, such, for instance, as the binding over of an acquitted prisoner. See OFFICE OF THE JUDGE.

Ex multitudine signorum colligitur identitas vera (*Bac. Works*, vol. 4, p. 73). (True identity is collected from a number of signs.) The identity in question is the identity of the thing comprised in a gift.

Ex necessitate legis. (From the necessity of the law), that is to say, by necessary implication (q.v.) of the law.

Ex necessitate rei. (From the necessity of the case.) Compare *Necessitas non habet legem* and *Quod necessitas cogit, defendit*.

Ex non scripto jus venit quod usus comprobavit (*I.* 1, 2, 9). (Without anything being written, there comes into existence a body of law which derives its validity from custom.)

Ex nudo pacto non oritur actio (*Plow. Com.* 305). (No action arises from a nude contract, that is to say, a contract entered into without consideration.) "A consideration of some sort or another is so necessary to the forming of a contract, that a *nudum pactum*, or agreement to do or pay something on one side, without any compensation on the other, will not at law support an action; and a man cannot be compelled to perform it" (2 *Bl. Com.* 445). An action will, however, lie on an instrument under seal even though without consideration.

Ex officio. By virtue of his office. Thus the chairman of a county council is *ex officio* a justice of the peace for the county if he has taken, or as soon as he takes, the required oath: and the Attorney-General exhibits (or used to exhibit, for he has not done so of recent years) criminal informations (q.v.) *ex officio* in respect of misdemeanours affecting the public tranquillity or the government of the country.

Ex officio Oath. The statute 13 Car. 2, c. 12, forbade any ecclesiastical court to administer to any person the oath called the oath *ex officio*, that is to say, the oath under which he could be compelled to answer questions the answers to which would expose him to censure or punishment. A like oath known by a like name had been ordinarily administered by the High Commission (q.v.); and when that court was abolished by the statute 16 Car. 2, c. 11, the *ex officio* oath went with it and finally disappeared out of the procedure of our Courts. See INQUISITION.

Exon (or Exeter) Domesday. This is a collection of copies of the rolls or returns made in respect of the counties of Wilts, Dorset, Devon, Somerset and Cornwall by the Commissioners appointed by William the Conqueror to compile Domesday (q.v.). It is preserved in the library of the cathedral at Exeter.

Exoneration is where a person or estate is relieved from a liability, by the liability being thrown on another person or estate. The term is chiefly, if not exclusively, used with reference to questions arising in the administration of estates of deceased persons: thus, if a testator directs his debts to be paid primarily out of his real estate, this exonerates his personalty from liability to the debts. So, if a married woman joins in mortgaging her land to secure money raised for the benefit of her husband, she is entitled on his death to be exonerated from the charge by causing the debt to be paid out of her husband's estate.

As to the exoneration of the personal estate of a deceased person from the liability to satisfy a mortgage debt charged on his real estate, see LOCKE KING'S ACT; also CONTRIBUTION; MARSHALLING.

Exoneratione Sectæ, De. Up to 1660, when wardship in the feudal sense was abolished by the statute 12 Car. 2, c. 24, this was a writ which lay for a ward of the King to have the ward freed from all suit to the County Court, hundred court, etc., during wardship.

Exoneratione Sectæ ad Curiam Baronium, De. This was a writ which lay, up to 1660, for the guardian of a ward of the King to restrain the steward, etc., of the court baron

from distraining the ward for not doing service at the court.

Exoneretur. (Let him be discharged.) In a proceeding by foreign attachment (q.v.) in the Mayor's Court, this was an entry on the defendant's recognisance of bail which was made when the action had been withdrawn or settled: it operated as a discharge of the bail from their liability.

In the days when arrest on mesne process existed in ordinary actions in the superior Courts, an *exoneretur* was entered on the bail-piece or filacer's book, if the defendant was rendered or taken to prison, because the bail were thereby discharged.

Ex pacto illicito non oritur actio. (No action arises out of a contract which is prohibited by the law.) Compare Ex TURPI CAUSA, etc.

Ex parte. In its primary sense, "ex parte," as applied to an application in a judicial proceeding, means that it is made by a person who is not a party to the proceeding, but has an interest in the matter which entitles him to make the application. Thus in a bankruptcy proceeding or an administration action, an application by A. B., a creditor or the like, would be described as made "ex parte A. B.," that is, on the part of A. B. In its more usual sense, *ex parte* means that an application is made by one party to a proceeding in the absence of the other. Thus an *ex parte* injunction is one granted without the opposite party having had notice of the application. It would not be called *ex parte* if he had proper notice of it, and chose not to appear to oppose it.

Ex parte materna; Ex parte paterna. Claiming through the mother's (*materna*) or the father's (*paterna*) line. See DESCENT.

Ex parte talis. An obsolete writ which, according to Fitzherbert, lay for a bailiff or receiver who "having auditors assigned to take his accounts, cannot obtain of them reasonable allowances but is cast into prison." Under the writ the bailiff was brought up before the Barons of the Exchequer, before whom the lord who had employed him was also required to appear. More generally speaking it was the remedy of a defendant against whom there had been a judgment in the old action of account (q.v.).

Expatriation takes place when a person loses his nationality, and renounces his allegiance to his native country by becoming the subject of a foreign State. Expatriation by a British subject was for the first time made possible by the Naturalization Act, 1870, s. 4. That Act was repealed and replaced by the British Nationality and Status of Aliens Act, 1914, under s. 13 whereof a British subject may now expatriate himself. See EXUERE PATRIAM; NATURALIZATION; REPATRIATION.

Expectancy, Estate in. See ESTATE.

Expectant Heir. An expectant heir, in the language of equity, is a person who, having a reversionary right or hope of succession to property, but little or no property immediately available, is exposed to the temptation of selling or mortgaging his right or expectation on unreasonable terms (*e.g.*, for much below its value, or at a usurious rate of interest), and is therefore considered as entitled to the protection of the Court against the enforcement of "catching bargains," as they are called. Thus, where a man twenty-six years of age entitled to a reversion of £600, but wholly without present means, applied to a money-lender, who advanced him £85 on a mortgage of the reversion for £100, with a provision that if default should be made in payment of the £100, it should bear interest at 5 per cent. per month; it was held, that the mortgagor was entitled to a decree for redemption of his reversion on payment of the sum borrowed and simple interest at 5 per cent. per annum. The term "expectant heir" is used, not in its literal meaning, but as including everyone who has either a vested remainder or a contingent remainder in a family property, including a remainder in a portion, as well as a remainder in an estate, and everyone who has the hope of succession to the property of an ancestor, either by reason of his being the heir apparent or presumptive, or by reason merely of the expectation of a devise or bequest on account of the supposed or presumed affection of his ancestor or relative. See REVERSIONARY; UNDUE INFLUENCE; FRAUD.

Expeditatæ arbores. In Fleta this expression means trees which not merely had been cut down but the roots of which had been stubbed up.

Expeditate; Expeditation. In the ancient forest law this meant to cut out the balls of a dog's fore-feet so as to render him incapable of pursuing game. The operation was known as expeditation. See IMPEDIATUS.

Expeditio. The liability to contribute to the cost of repelling invasion which in Anglo-Saxon times attached to land. See TRINODA NECESSITAS.

Expedit reipublicæ ne sua re quis male utatur (*I.* 1, 8, 2). (It is to the interest of

the public that no one should use his property badly.)

Expedit reipublicæ ut finis sit litium (*Co. Litt.* 303). (It is in the public interest that the decision of cases should be final.)

Expenditors. Officials who performed duties, such as those of treasurer or manager, for the various commissioners of sewers (q.v.), were known as expenditors. See the statute 23 Hen. 8, c. 5, popularly known as the "Bill of Sewers" (q.v.).

Expensæ Litis. (The expenses of the cause.) The ancient term for costs.

Expensis Levandis, De. While members of Parliament were paid by their constituents, this was the general name of the writ which each member, being a citizen or burgess, was entitled to sue out at the end of each session. It required the sheriff to levy the allowance of two shillings which the member was entitled to receive in respect of each day that he had attended during the session.

Expensis militum levandis, De; Expensis militum non levandis, De. Down to 1681, when the common law liability of constituencies to pay their representatives was last enforced, the writ *de expensis militum levandis* lay to a sheriff commanding him to levy the allowance of four shillings a day payable at the end of the parliamentary session to a knight of the shire in respect of each day that he had attended the House of Commons, while the writ *de expensis militum non levandis* lay to restrain a sheriff from levying in respect of such allowance from any tenant in ancient demesne (q.v.).

Expilationis, Crimen. The offence of extortion (10 *Rep.* 102*a*). *Expilatio* does not seem to have been used by the jurists as meaning extortion; but Cicero uses it as meaning the act of pillaging. Compare CONCUSSIONIS, ETC.

Expiring Laws Continuance Act. This is an Act passed every year to continue, generally until the end of the following year, a number of Acts which otherwise would have expired. The Ballot Act, 1872, was thus kept in force down to 1918, when it was made permanent. When the annual Act includes any expiring Act, but is not passed until after the expiration thereof, then that expiring Act is deemed to have been in force, except as to penalties, between the date of its expiry and the passing of the annual Act (Act of Parliament (Expiration) Act, 1808).

Explees; Esplees; Expleta; Expletia; Explecia. All anciently used as meaning the rents and profits of an estate.

Explosives. The causing of explosions endangering property is punishable under the Malicious Damage Act, 1861, ss. 9, 10; the causing of those which injure the person is dealt with in the Offences against the Person Act, 1861, ss. 28-30, 64, 65; using, keeping or making explosives with intent to damage either person or property subjects the offender to heavy penalties under the Explosive Substances Act, 1883, ss. 2-4; and the last-mentioned Act also empowers the Attorney-General to have an inquiry held before a justice into any offence against the Act, even though no person is charged.

The manufacture, keeping, sale, and conveyance of every kind of explosive, and of any adaptation or preparation thereof, is regulated by the Explosives Act, 1875. See FIREWORKS.

Exposing Child. See CRUELTY TO CHILDREN.

Exposing Person with Contagious Disease. This, if done in a public place, is a common law misdemeanour. Under the Public Health Act, 1875, s. 126, the exposure of the infected person, either by himself or by others, in any place of public resort, or the sale, etc., of infected clothing or things, is punishable summarily.

Ex post facto. (By a subsequent act.) Thus a lease granted in excess of or outside the limits within which leases of settled land may be granted is capable of ratification *ex post facto* by the remainderman or reversioner. But the most common use of the word is in connection with a statute which either makes an act punishable which, when done, was not punishable, or which imposes in respect of any act a punishment different from that which could be inflicted at the time when the act was done. Such statutes are not now passed.

Exposure, Indecent. This, if done in public, is a common law misdemeanour. Under the Vagrancy Act, 1824, s. 4, it is punishable on summary conviction if done in or in view of any place of public resort and with intent to insult any female. Under the Town Police Clauses Act, 1847, s. 28, wilful and indecent exposure in any street to the annoyance of residents or passengers, in any place where the Act is in force, is punishable summarily.

Ex præcedentibus et consequentibus est optima interpretatio (1 *Rol. Rep.* 375). (The best interpretation is from that which precedes and follows.) This is practically a repetition of *ex antecedentibus, etc.*

Express. An act evidencing intention is said to be express when it is done with the direct object of communicating the intention, as opposed to implication (q.v.). The com-

munication may be effected by speech, writing or gestures: thus a promise in these words, "I promise to pay you £50," is express, whether verbal or written; if A. signifies his assent to a proposal by nodding or other gestures, the communication is still express; therefore the acceptance of a bid by an auctioneer is express when it is evidenced by the fall of his hammer. See CONSTRUCTIVE; IMPLICATION; TACIT.

Expressa nocent, non expressa non nocent (*D.* 50, 17, 195). (Things expressed harm, things not expressed do not.) This was a maxim of the Roman law. But in our law there is malice implied as well as express malice.

Expressa non prosunt quæ non expressa proderunt (4 *Rep.* 73). (If a benefit is produced without the use of any given words, then nothing is gained by the use of those words.)

Express Colour. See COLOUR.

Expressio eorum quæ tacitè insunt nihil operatur (4 *Rep.* 73). (The expressing of those things which are tacitly implied, is inoperative.) Thus no effect whatever is produced by the addition of the words "value received" to a promissory note or to a bill of exchange: either the one or the other will have precisely the same operation whether those words are or are not inserted, for the law in the case of either of them implies consideration.

Expressio unius personæ vel rei, est exclusio alterius. (The express mention of one person or thing is the exclusion of another.) This is another form of the maxim DESIGNATIO UNIUS ETC. (q.v.). Thus if a testator leaves "all my silver plate to A.," this will of course carry all the plate that she may have; but if she goes on to say, "that is to say, my teapot, my tray and my biscuit box," the bequest will not cover a coffee pot which she overlooked when enumerating her plate.

Express Malice. See MALICE.

Expressum facit cessare tacitum (*Co. Litt.* 183; 210*a*). (When there is express mention of certain things, then anything not mentioned is excluded.) See DESIGNATIO UNIUS, ETC.

Expropriation is compulsorily depriving a person of a right of property belonging to him in return for a compensation. The term has been introduced from its use in foreign countries to denote a compulsory purchase of land, etc. for the purposes of a railway, canal, or the like (*expropriation pour cause d'utilité publique*). Compare EMINENT DOMAIN.

Ex proprio motu. (Of his own accord.) See EX MERO MOTU.

Ex relatione. (From a narrative or information.) A case decided in a Court of justice is said to be reported *ex relatione* (or *ex rel. amici*) when the reporter derives his knowledge of it not from having been present in Court, but from notes or information communicated to him by some member of the Bar who heard the case argued and decided.

Both criminal informations (q.v.) and *quo warranto* (q.v.) informations (both of which are partly at the suit of the Sovereign and partly at the suit of the subject) are filed on the information or at the relation (*ex relatione*) of such subject, who is called the relator (q.v.), and may have no interest in the matter except as a common informer (q.v).

Extend; Extent. To extend is to make a valuation of property by the oath of a jury, pursuant to a writ issued for that purpose. An extent is (1) the valuation thus made, which is embodied in an inquisition by the sheriff or other person executing the writ—the most usual instance occurs under a writ of *elegit* (q.v.); (2) a writ of execution, sometimes also called a writ of *extendi facias* ("that you cause to be extended"), directing an extent to be made.

Extents to recover debts due to the Crown are of two kinds—in chief and in aid.

An extent in chief is an adverse proceeding by the Crown for the recovery of a debt of record due to it. It issues in the first place against the Crown's immediate debtor, and directs the sheriff to extend and seize his body (which is not now commonly taken) and his real and personal property, including debts due to him by other persons, to enforce payment of which an "extent in chief in the second degree" may be issued against them, and so on.

An extent in aid is one sued out at the instance and for the benefit of a debtor to the Crown, for the recovery of a debt due to himself, the Crown being merely the nominal plaintiff. To obtain an extent in aid, an extent *pro formâ* is first sued out against the debtor to the Crown, and on the sheriff returning that another person is indebted to him, the extent in aid issues against the subdebtor. For some years before the enactment of the Extents in Aid Act, 1817, persons who already were or who deliberately made themselves debtors to the Crown had turned the extent in aid into a means of recovering their own private debts; but the Act of 1817 provides that no more than what is due to

the Crown can be recovered on an extent in aid; and that process is now practically obsolete.

An immediate extent is one which issues in urgent cases without the usual preliminary of a *scire facias* (q.v.), on proof that the debt is in danger of being lost (Crown Suits Act, 1865, s. 47). If there is any question as to the existence of the debt, or as to whether the property seized under the writ belongs to the debtor, it is raised by pleading either to the *scire facias*, or to the return of the writ of extent. See PLEA; DEBT AND DANGER, AFFIDAVIT OF.

Writs of extent are seldom issued.

Extents, or writs in the nature of extents, were formerly issued as writs of execution for private persons, either (1) to obtain satisfaction of a debt due on a recognizance (*e.g.*, a statute merchant); or (2) to levy execution against lands descended to an heir under a judgment recovered against him on an obligation or bond entered into by his ancestor.

See DIEM CLAUSIT EXTREMUM; LIBERATE; VENDITIONI EXPONAS; AMOVEAS MANUS; QUIETUS.

Extendi facias. See EXTEND.

Extenta manerii. A statute of uncertain date which deals with the method to be adopted in "extending or surveying a manor." It is printed in the *Statutes of the Realm*, at p. 242 of Vol. I.: in the *Statutes at Large* it is printed as 4 Edw. 1, st. 1.

Exterritoriality. See EXTRATERRITORIALITY.

Extinguishment. A right or obligation is said to be extinguished when it ceases to exist. Thus, a debt is extinguished when it is paid, and an easement may be extinguished in several ways, as by release, abandonment, etc.; but the term "extinguishment" is applied especially to the case of an easement ceasing to exist from unity of possession—that is, where the dominant and the servient tenements become united in the same person for an estate in fee simple. Compare SUSPENSION; MERGER.

Extirpatione, De. A writ which formerly lay against one who maliciously destroyed houses, trees, etc., on land in respect of which a verdict had been found against him.

Extocare. Anciently this meant to clear land of trees, etc., and convert it into arable, pasture, or meadow.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum (10 *Co.* 102). When, by colour of office, any person extorts that which is not due, or above due, or before the time when it is due, then he commits the offence known as extortion (q.v.).

Extortion is the misdemeanour committed by a public officer, who, under colour of his office, wrongfully takes from any person any money or valuable thing. It is punishable at common law by fine and imprisonment, and removal from office. As to extortion by sheriffs, bailiffs, etc., see the Sheriffs Act, 1887, s. 29 (2).

As to extortion of money, etc., by threats, see the Larceny Act, 1916, ss. 29-31.

See OPPRESSION; DURESS.

Extra Costs. See AFFIDAVIT.

Extracta curiæ. Anciently this meant the profit arising from the customary fees paid to the Court.

Extradition. Where a person, who has committed a crime in one country, takes refuge in another, and is delivered up by the latter to the former for the purpose of being tried and punished, this delivery up or surrender is called extradition.

Until well into the last century there was no means of effecting extradition either to or from this country. To remedy this, various Acts have been passed, beginning with the statute 6 & 7 Vict. cc. 75, 76, confirming or authorising treaties of extradition between Great Britain and foreign countries. Such treaties contain reciprocal obligations on the part of each country to deliver up fugitive criminals. These Acts were repealed by the Extradition Act, 1870, and that Act, as amended by the Extradition Acts, 1873, 1895 and 1906, contains the existing law on the subject. They provide for the application of the Acts to foreign States with which arrangements have been made for the surrender of fugitive criminals, and define the offences for which they may be surrendered. They also provide that no criminal shall be surrendered for a political offence, or for the purpose of being tried for any other than the "extradition offence," that is, the offence for which he is surrendered.

To obtain the extradition of a fugitive criminal in England, a requisition is made to a Secretary of State by a diplomatic representative of the State requiring the surrender. The Secretary of State signifies this requisition to a magistrate (normally the police magistrate sitting at Bow Street), who, after hearing *primâ facie* evidence in support of the application, issues a warrant for the apprehension of the accused. If, on the hearing of the case, sufficient evidence is produced

(such evidence, namely, as would justify the committal for trial of an offender against the English law), the magistrate commits the accused to prison. A period of fifteen days is allowed to elapse, to enable the prisoner to apply for a writ of *habeas corpus*, if he is so advised. If no such application is made, or, if made, is unsuccessful, the Secretary of State makes out a warrant on which the criminal is surrendered to the foreign State. See POLITICAL OFFENCE.

Extrajudicial means (1) something which is done without judicial proceedings—as, when we speak of extrajudicial evidence (see EVIDENCE), or say that a distress is an extrajudicial remedy (see REMEDY); (2) something which is said by a judge or judicial officer in a judicial proceeding, but beyond its scope. Thus, a dictum (q.v.) is an extrajudicial opinion.

Extra legem positus est civiliter mortuus (*Co. Litt.* 130*a*). (One put outside the law [that is to say, an outlaw] is civilly dead.)

Extraordinary. The writs of *mandamus*, *quo warranto*, *habeas corpus*, and some others, are sometimes called extraordinary remedies, in contradistinction to the ordinary remedy by action.

As to extraordinary resolutions, see RESOLUTION. As to the "extraordinary jurisdiction" of the Court of Chancery, see CHANCERY.

Extraterritoriality. The fiction of extraterritoriality is that by which the persons and residences of ambassadors and Sovereigns, when abroad, are treated as being within their own territory, and outside of (*extra*) the territory where they actually are. The fiction is not now of much importance except with reference to the exemption of ambassadors (q.v.) from process, etc.

Extra territorium jus dicenti impune non paretur (10 *Co.* 77). (The sentence of one adjudicating outside his jurisdiction can be disobeyed with impunity.)

vagantes. See CANON LAW.

vires. The more usual form is *res* (q.v.).

nsic. See EVIDENCE.

irpi causâ non oritur actio. (No dismatter can ground an action.) Thus a woman who is seduced has no action against the seducer, because, so far as she is concerned, the seduction is disgraceful; but anyone who suffers the loss of her services has a cause of action, inasmuch as he is not affected by the nature of the transaction out of which the action arises. See EX DOLO MALO, ETC.

Exuere patriam is to cast off one's nationality, to expatriate oneself. See EXPATRIATION.

Ex vi termini. (From the force of the term.) A term, or expression, is said to be interpreted *ex vi termini* when it is interpreted, not by extrinsic evidence, but by its own intrinsic meaning. Thus it has been held that it is a manifest contradiction in terms to say that a man was assaulted by his permission, inasmuch as an assault must be against the will of the party assaulted.

Eyre, or **Eire** (from the Latin *iter*, a journey), signified the Court of the justices itinerant or justices in eyre, who were regularly established, if not first appointed, by the Parliament of Northampton, 1176, in the twenty-second year of Henry the Second, with a delegated power from the king's great Court or *Aula Regia*, being looked upon as members thereof; and they made their circuit round the kingdom once in seven years, for the purpose of trying causes. They were afterwards directed by Magna Charta to be sent into every county once a year; but, says Coke, "as the power of the justices of assize, by many Acts of Parliament and other commissions increased, so these justices itinerant by little and little vanished away." See ASSIZE.

There were also eyres of the forest. See FOREST.

See ARTICLES OF THE EYRE.

F

"F." See BRAWLING.

F.A.A. In policies of marine insurance, these letters denote "free from all average," which means that the underwriters are not liable unless there is a total, as distinguished from a partial, loss of the subject-matter of the insurance. See AVERAGE.

Fabric Lands. These are lands given *ad fabricam ecclesiæ reparandam* (to repair or maintain the fabric or structure of a church). Such lands were known in Anglo-Saxon times as timber lands. Notwithstanding the law of mortmain (q.v.), any person may, under the Gifts for Churches Act, 1803, by deed executed three months before his death and duly enrolled in the Central Office, or by will executed three months before his death, vest in any person or body politic or corporate lands not exceeding five acres (whatever be the value) or goods and chattels not exceeding £500, towards erecting, rebuilding, repairing,

purchasing, or providing any church or chapel of the Church of England or a residence for the officiating minister; and the grantees of such gift may, notwithstanding the law of mortmain, buy and hold land out of the proceeds of such gift. Under the Gifts for Churches Act, 1811, s. 1, the King is empowered to make, for the like purposes, grants (not exceeding five acres in any one grant) of crown lands in the Duchy of Lancaster; while by s. 2 the owner of any manor is empowered to give by deed (which may be executed at any time before his death and must be duly enrolled in the Central Office) five acres of the waste of the manor for the like purposes; but (Commons Act, 1899, s. 22, Sch. I.) such gift by the owner of a manor is invalid unless made with the consent of the Ministry of Agriculture and Fisheries.

Fabrics, Inflammable. Under the Fabrics (Misdescription) Act, 1913, it is an offence, punishable on summary conviction, to sell, expose, or have for sale any textile fabric which is directly or indirectly described, whether orally or in writing, as being in any degree uninflammable, unless such fabric conforms to the standard of non-inflammability prescribed by regulations made under the Act by the Home Secretary. Those regulations (1914, No. 48) prescribe that the required standard of non-inflammability is as follows:—that the fabric, when a sample is thoroughly washed, dried and hung up vertically, and, when a lighted taper is kept in contact with its lower edge for from twelve to fifteen seconds, shall not go alight or, if it does go alight, shall burn without a flame or with a flame which converges and dies out.

The Act was passed as the result of many serious accidents having been caused by flannelette which, although highly inflammable, had been sold as non-inflammable.

Facias.. (That you cause.) This is found in *fieri facias* (that you cause to be made) (q.v.) and *scire facias* (that you cause to know) (q.v.).

Facio ut des; Facio ut facias. (I do in order that you may give; I do in order that you may do.) These are two out of the four divisions of considerations given by Blackstone. The others are *do ut des* and *do ut facias*.

Fac Simile. (Make it alike.) A copy which exactly reproduces not merely the words but the form of the characters of the words, etc., of the original. A photographic or other similar copy is the only kind which can properly be called a *fac simile*.

In the law a complete copy was, however, known as a *fac simile;* and down to 1851 it was necessary to set out in every indictment, inquisition, or criminal information, a complete copy of the instrument by means or in respect of which the offence had been committed. The Criminal Procedure Act, 1851, ss. 5, 7, and the Forgery Act, 1861, ss. 42, 43, made it sufficient to describe the instrument by any usual name or to give its purport; and now, since the repeal of these enactments by the Indictments Act, 1915 (see INDICTMENTS), it is sufficient to set out the offence "in ordinary language."

The complete copy known in law as a *fac simile* is not, however, a mere fair copy; for it sets out the alterations and obliterations, if any, which were made in the original.

In the case of a will, it is usual to engross the probate copy merely as a fair copy: but in cases where the construction of a will may be affected by the appearance of the paper, the probate copy is a *fac simile* copy; and a *fac simile* probate is conclusive proof that the will had, before execution, been altered as shown in the *fac simile*.

Fact. The existence of every right and liability depends on two questions: first, whether there is a rule of English law that in certain circumstances that right or liability shall arise; and secondly, whether those circumstances exist in the particular case under discussion. The former is called a question of law, the latter a question of fact. Thus the right of C.B., the eldest son of A.B., to succeed to the land of his deceased father, depends first on the rule of law that, unless it is subject to a peculiar rule of descent (e.g., gavelkind, borough English, or the like), the land of an intestate person descends to his eldest son; and secondly, on various questions of fact, such as whether the land is situated in a district subject to a peculiar rule of descent, whether A.B. died intestate as to that land, and whether C.B. is his eldest legitimate son, which again involves other questions of fact or law, or both.

Questions of foreign law (including Scotch, Irish, and colonial law) are questions of fact in the English Courts, requiring to be proved by the evidence of persons professionally familiar with the system of law in which the question arises, or by the opinion of a Court administering that law, given on a case submitted to it under the British Law Ascertainment Act, 1859, or the Foreign Law Ascertainment Act, 1861. See CASE.

The distinction between questions of fact and law is of importance with regard to plead-

ing, because a party is bound to state, and to state only, the material facts upon which he relies, but not the evidence in support of them (R.S.C., Ord. 19, r. 4), while questions of law need not and must not be pleaded. Questions of law may be raised by proceedings under Ord. 25, in lieu of demurrer, special case, or on motion for judgment (see those titles). When a question of law is raised at the trial of an action by a jury, it is decided by the judge, and the questions of fact are decided by the jury, the rule being that "*ad quæstionem facti non respondent judices; ad quæstionem juris non respondent juratores.*" (See that maxim.) It not unfrequently happens that the pleadings raise a mixed question of law and fact (*e.g.*, whether the defendant has libelled the plaintiff), and then either the judge directs the jury as to the law, leaving them to give their verdict for one party or the other on the facts as proved, subject to the direction so given, or the jury may bring in a special verdict finding the facts of the case, on which judgment is given by the Court for one party or the other, according to the law applicable to the facts so found. See FURTHER CONSIDERATION; RESPONDEAT OUSTER; VERDICT.

When, after the issue of a writ, the parties are agreed as to the question of fact to be decided between them, they may with the consent of the Court or a judge have those questions tried without formal pleadings (Ord. 34, rr. 9-12).

In the law of evidence, facts are sometimes divided into (i) facts in issue (also called principal facts, *facta probanda*), or those facts which are required to be proved, and (ii) evidentiary facts (*facta probantia*), or those facts which are given in evidence with the view of proving the former. Where the fact given in evidence is the same as the fact in issue, the evidence is said to be direct; as where a witness on a trial for murder proves that he saw the prisoner kill the deceased. See EVIDENCE.

In jurisprudence, facts are variously divided into juridical and non-juridical, according as they do or do not give rise to or affect legal rights and duties, and, by the Benthamite school, into investitive facts (those by means of which a right comes into existence), divestitive facts (those by which it terminates), and translative (those by means of which it passes from one person to another).

Factor. A factor is an agent to whom goods are consigned or delivered for sale by or for a merchant or other person, and who in return for his trouble receives a compensation called factorage or commission. He has a lien for this remuneration on all the goods entrusted to him by his principal. (See LIEN.) "Factor" is also sometimes used (especially in the old books) to denote an agent for the purchase of goods; but at the present day this kind of agent seems to be more commonly called a commission agent or commission merchant. (See AGENT.) The general rule (independently of the Factors Act, 1889 (q.v.) and the doctrine of market overt (q.v.)) seems to be that a factor is a general agent; and therefore if goods are entrusted to him as factor, and he sells them, such a sale will bind the principal, whatever his private instructions may have been, unless the purchaser knew of them at the time. See AGENT.

Factorage. Formerly this meant the commission received by a factor.

Factories. The Factory and Workshop Act, 1901, consolidated and amends the provisions of the pre-existing enactments for protecting the health and lives of persons employed in such establishments, for regulating the employment of children over twelve and of young persons and women, and for the inspection of factories and workshops; and it (s. 62) altogether prohibits the employment of children under twelve in factories or workshops.

It forms a complete code which, however, has itself been to some extent amended and extended by the Employment of Women Act, 1907, the Factory and Workshop Act, 1907, the White Phosphorus Matches Prohibition Act, 1908, the Factory and Workshop (Cotton Cloth Factories) Act, 1911, the Police Factories, etc. (Miscellaneous Provisions) Act, 1916, and the Education Acts, 1918 and 1921. It is illegal to employ in any factory or workshop any child (Education Act, 1918, s. 14) under the age up to which (Education Act, 1921, s. 170 (13)) his parents are under an obligation to cause him to receive elementary instruction or to attend school That age is normally fourteen (Education Act, 1921, s. 42); but it may be extended under a byelaw to fifteen (*ib.* s. 46). See HALF-TIMER.

Factors Act, 1889. This enables a person in the possession of goods, or documents of title to goods, to validly sell or pledge the same, notwithstanding they may have been entrusted to him for a different purpose, or may have been already sold by him to someone else, or may be subject to a lien in favour of the person from whom he has bought them, or that his agency may have been revoked—the object being to protect persons having

bonâ fide dealings with a factor or agent, without notice of the limitation on his power to deal with the goods.

The Act repeals, consolidates and amends, and replaces all the earlier enactments on the subject.

Factum. An act or deed. (See NON EST FACTUM.) It must be recollected that anciently land was transferred by an act, such as the giving of seisin, of which a deed or written instrument was merely evidence.

Factum à judice quod ad ejus officium non spectat, non ratum est (*D.* 50, 17, 170). (Anything done by a judge, otherwise than in due execution of his functions, derives no validity from the fact of his being a judge.) (Compare JUDICIUM A NON, ETC.

Factum probandum; Factum probans. See FACT.

Facultas probationum non est angustanda (4 *Inst.* 279). (The opportunity of proof is not to be limited.) Coke inserts this maxim amongst a miscellaneous collection of maxims as to the examination of witnesses: he does not give its source.

Faculty. This, in ecclesiastical law, is a licence to do some act which without such licence would be unlawful; and it is granted by the ordinary of the diocese or his deputy. A licence (under the Church Building Act, 1845, s. 1, and the New Parishes Acts and Church Building Acts Amendment Act, 1869, s. 8), for the demolition of an existing church, which is to be replaced by a new church, is a case in point. Strictly speaking, a monument cannot be erected in a church or churchyard without a faculty, though it is not in practice often applied for, but faculties for such things as a second altar, a chancel screen, etc., must be applied for. A notary public is appointed by faculty.

The Archbishop of Canterbury has a Court (really an office) called the Court of Faculties, out of which faculties, including licences to marry, etc., are granted, and also an officer called the Master of the Faculties, who deals with applications for the admission and removal of notaries public. The judge of the Provincial Courts (q.v.) of Canterbury and York is now *ex officio* Master of the Faculties (Public Worship Regulation Act, 1874, s. 7).

A faculty for the ordination as deacon, anywhere in England, of anyone under the age of twenty-three can be obtained only from the Archbishop of Canterbury.

Faggot Vote. A faggot voter was one who voted in respect of property just sufficient to give him a vote, and of which he had become the real, or more often the nominal, owner merely in order that he might acquire the vote. Thus he might acquire a forty-shilling freehold—which for centuries gave him the county franchise—and mortgage it for the full value, which still left him the vote. The faggot voter came into existence about the year 1700; he flourished until 1832, when the Reform Bill seriously interfered with his activities; the Representation of the People Act, 1884, repressed him still further, and the Representation of the People Act, 1918, finally disposed of him. The matter is now of historical interest only. Compare POTWALLER.

Failure of Issue. There is said to be a failure of issue in the case of one dying without issue (q.v.).

Failure of Record. Before the Judicature Acts, when an action was brought against one who pleaded, in bar (q.v.) of the action, matters of record, and when the plaintiff in reply pleaded *nul tiel record* (there is no such record), then if the defendant failed to prove the record, the defendant was said to fail of his own record and the plaintiff was entitled to judgment.

Faint Action. See ACTIONS.

Faint Pleader. Anciently this meant a false and fraudulent manner of pleading to the detriment of some person other than a party to the action.

Fair. See MARKETS AND FAIRS; STATUTE FAIR.

Fair Comment. It is a defence to an action for libel if the defendant can show that words in themselves defamatory were a fair comment on a matter of public interest. But the defence will fail if the plaintiff can show that the words were published maliciously. The question as to whether the matter was of public interest is for the judge; the questions as to fair comment and malice are for the jury.

Fair Pleader. See BEAU PLEADER.

Fairway. This means the part of a navigable river or of an estuary, etc., which is used as a passage by vessels.

Fait. The French form of *factum* (q.v.).

Fait enrolle. A deed enrolled, and particularly a deed of bargain and sale (q.v.) which required enrolment.

Faitours. Used in the statute 7 Rich. 2, c. 5, as meaning evil doers or vagabonds.

Falcatura; Falca; Falcator. Falcatura was one of the services from an inferior tenant to his lord. It consisted in mowing for one day in the lord's meadow. *Falca* was the hay

that was mowed in the day and *falcator* was the mower.

Falda; Fald. Anciently these words each meant a sheepfold.

Faldæ cursus. Anciently this meant a sheep-walk. See FOLD COURSE.

Faldage is the same as foldage and free-fold (q.v.).

Faldfee; Faldfey. A fee or rent paid anciently by some tenants to their lord for the privilege of folding their sheep on their own land instead of performing foldage (q.v.).

Faldworth. A person of sufficient age to be subject to the law of *frankpledge* (q.v.).

Falkland. The same as folkland (q.v.).

Falkmote. The same as folkmote (q.v.).

Fall. This, as a lineal measure, meant the fortieth part of a furlong, and as a square measure, it meant the one hundred and sixtieth part of an acre. As the furlong and the acre varied locally, so also did the fall.

Falmotum. The same as folkmote (q.v.).

Falsa demonstratio non nocet (6 *T. R.* 676). (An erroneous description [of a person or thing] does not [necessarily] destroy [the effect of an instrument].) Thus, where A devised "all his freehold houses in Aldersgate Street, London," and had in fact only leasehold houses there, it was held that the leaseholds passed. Compare NIHIL FACIT ERROR, ETC.

Falsa demonstratione legatum non perimitur (*I.* 2, 20, 30). (A legacy will not [necessarily] fail because of an erroneous description [of a person or thing].) Compare NIHIL FACIT ERROR, ETC., and FALSA DEMONSTRATIO, ETC.

Falsa orthographia non vitiat concessionem; Falsa grammatica non vitiat concessionem (9 *Co.* 48). (Bad spelling or bad grammar does not vitiate a grant.) Compare MALA GRAMMATICA, ETC.

False Action. See ACTIONS.

False Character. Personating the master or mistress of a servant, or any representative of such master or mistress, and giving, whether in writing or verbally, a false character to the servant, or the seeking of employment by a servant with a false character, is punishable summarily with not more than £20 (half of which goes to the prosecutor) and imprisonment according to scale in default of payment (Servants' Characters Act, 1792).

[illegible]gery of the certificate of service or of any soldier or seaman, or the per- of the holder of any such certificate, able summarily under the Seamen's ers' False Characters Act, 1906, s. 1. ion lies on a false representation as to the character of another made with intent that he may obtain money, credit or goods unless such representation is in writing and is signed by the person making it (Statute of Frauds Amendment Act, 1828, s. 6).

False Claim. Under the ancient forest law a man having certain rights in the forest who claimed more than his due was said to make a false claim; and he was liable to be amerced. See AMERCIAMENT.

False Declaration. See CORRUPT PRACTICES.

False Form. In the old common law practice, errors and omissions in pleadings were termed false form. False form might still leave the pleadings intelligible, in which case aid by verdict (q.v.) might take place: but when the false form produced incertainty (q.v.) there could be no aid by verdict.

False Imprisonment is where a total restraint for some period, however short, is put upon the liberty of a person without sufficient legal authority. Thus, if a constable arrests a man for felony without warrant and without reasonable cause for suspecting him, he is liable to an action of damages for false imprisonment. See TORT.

False Judgment, Writ of. This was a writ used to bring appeals to the High Court from inferior Courts not of record proceeding according to the course of the common law. See ACCEDAS AD CURIAM; ERROR.

False Latin. Indictments were in Latin, of a sort, in England until the enactment of the statute 4 Geo. 2, c. 26, and in Wales until the enactment of the statute 6 Geo. 2, c. 14, s. 5. The Treason Act, 1695, s. 9, which deals with the use of improper Latin in an indictment for treason, has never been formally repealed; but it is virtually repealed by the above-mentioned Acts of Geo. II. When an indictment was in Latin it could be quashed for "false Latin" if the words in question did not make sense as Latin, unless they were terms of art in English law. See FRENCH.

False Lights and Signals. Exhibiting false lights or signals, with intent to bring any ship into danger, is felony, punishable with penal servitude for life as a maximum (Malicious Damage Act, 1861, s. 47). See also ABATEMENT OF FALSE LIGHTS.

False News. The Statute of Westminster the First (3 Edw. 1) c. 34, provided that anyone who told or published any false news or tales whereby discord might grow "between the King and his People or the Great Men of the Realm" should be taken and kept in prison until he had brought into Court him who was the first author of the tale. The statute

2 Rich. 2, stat. 1, c. 5, enacted that a like course should be taken with "Devisors of False News, and of horrible and false Lyes of Prelates, Dukes, Earls, Barons, and other Nobles and Great Men of the Realm and also of the Chancellor, Treasurer, Clerk of the Privy Seal, Steward of the King's House, Justices of the one Bench or the other [that is to say of the King's Bench or the Common Bench] . . . whereby Debates and Discords might arise between the said Lords or the Lords and the Commons . . . and great Peril and Mischief might come to all the Realm." The statute 12 Richard 2, c. 11, also dealt with the subject. The spirit in which these provisions were enacted was wholly foreign to that of a society which enjoys freedom of the Press and which has seen a campaign against the House of Lords carried to a triumphant conclusion. They were repealed by the S. L. Revision Act, 1887; and long before that date they had fallen into desuetude, the last proceedings under them having taken place in the reign of Queen Anne.

See SCANDALUM MAGNATUM; SEDITIOUS LIBEL.

A conspiracy to spread false news in order to affect the prices of stocks or shares or of merchandise is indictable at common law; but proof is not easy and prosecutions are infrequent, which is more than can be said of the offence.

False Pretence, in criminal law, is a false representation that some fact exists or has existed. Obtaining goods, money, etc., by false pretences with intent to defraud is a misdemeanour, the maximum punishment for which is five years' penal servitude (Larceny Act, 1916, s. 32). The offence is committed even if the accused intended to pay for the goods or to repay the money ultimately. Merely obtaining the use of a chattel for a time—as when a boat is hired—is not within the Act. A prisoner charged with larceny may be convicted of obtaining by false pretences if that offence be proved; and a prisoner charged with obtaining by false pretences may be convicted even though larceny is proved (Larceny Act, 1916, s. 44 (3) (4)). Although it is now practically immaterial whether a prisoner be indicted for false pretences or for larceny, yet the distinction between the two offences is of importance as regards the right of arrest. Any person may be arrested without warrant by anyone if he be actually "found committing" the offence of obtaining by false pretences (Larceny Act, 1916, s. 41 (1)) but not afterwards; whereas anyone reasonably suspected of having committed larceny may be arrested at common law without warrant by a constable or, if there has actually been a larceny committed, by anyone. The attempt either to obtain by false pretences or to commit larceny is a misdemeanour at common law (see ATTEMPT); but there is no power of arrest without warrant for the attempt to commit either the one offence or the other.

See DEBTOR ACT, 1869.

False Prophecies. The statute 5 Eliz. c. 15, enacted that any person publishing, whether orally or otherwise, any "fond fantastical or false prophecy" (compare FALSE NEWS), concerning the Queen or divers honourable personages and others of the realm, with intent thereby to cause "rebellion, insurrection, dissension, loss of life, or other disturbance," should be punishable with, for a first offence, a fine of £10 and one year's imprisonment or, for a subsequent offence, with imprisonment for life and forfeiture of all goods and chattels. This Act, which was a re-enactment of the statute 3 & 4 Edw. 6, c. 15, appears to have been directed chiefly against prophecies as to the date of the death of the sovereign; this had already been held to be treason, as being an "imagining" of the death of the King. Both statutes were repealed by the S. L. Revision Act, 1863.

False Representation. See MISREPRESENTATION.

False Return. An action of damages lies against a person who makes a false return to a writ, whether a sheriff acting under an ordinary writ of execution, or a person to whom a special writ, such as a *mandamus*, is directed. A false return may consist in a *suppressio veri*, as well as an *allegatio falsi*. A sheriff is liable to indictment if he makes a false return. See FALSO RETORNO BREVIUM, DE.

False Swearing was the common law misdemeanour committed by a person who swore falsely before any person authorised to administer an oath upon a matter of public concern, in such circumstances that the false swearing would have amounted to perjury if committed in a judicial proceeding; as where a person made a false affidavit under the Bills of Sale Act, 1854. Now false swearing in a judicial proceeding is punishable under s. 1 of the Perjury Act, 1911, and is called perjury (q.v.), while false swearing otherwise than in a judicial proceeding, where the law requires or authorises the administration of an oath, is punishable under ss. 2, 3 of the same Act, but is not called perjury.

That is now the only matter distinguishing the two offences, both being misdemeanours and the punishment being the same in each case.

Swearing includes affirmation (q.v.) or declaration (q.v.) (Perjury Act, 1911, s. 15).

False Trade Description. "For the purposes of this Act . . . the expression 'false trade description'" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act (Merchandise Marks Act, 1887, s. 3 (1)). See TRADE DESCRIPTION; MERCHANDISE MARKS.

False Verdict. See ATTAINT.

Falsify. Where an account is being investigated in the Chancery Division, and the party at whose instance it is taken shows that an item of payment or discharge contained in it is false or erroneous, he is said to falsify it.

If an account has been stated or settled between the parties and one of them afterwards impugns it, the Court may either reopen the whole account, or merely give liberty to "surcharge and falsify." In the former case the accounting party has the onus of showing that the account is full and correct, while in the latter case the onus lies on the party impugning the account, and if he objects to any omissions or errors in the account, he must allege them specifically and substantiate them by evidence. The grounds on which the Court allows a settled account to be re-opened are:—fraud in the settlement of the account, want of good faith on the part of a person in a fiduciary relation (*e.g.*, a trustee or solicitor), or the like. Where, however, it is merely a question of mistake and not of fraud, then only liberty to surcharge and falsify will be given. See SURCHARGE; ACCOUNT; SETTLED.

In the old books, falsify is used in the sense of defeating or avoiding, but this sense is obsolete. Thus, where a man was attainted of treason and afterwards was pardoned by Parliament, the attainder might, in certain circumstances, be falsified by him or his heir; and where a tenant for life suffered a recovery, the recovery might always be falsified by his issue in tail.

False retorno brevium, De. This was formerly the writ in an action against a sheriff for making a false return (q.v.).

Falsus in uno, falsus in omnibus. (False in one, false in all.) This maxim is not to be implicitly relied on. A person whose evidence as a co-respondent in a divorce case is utterly false may yet be perfectly reliable in matters of business.

Family Arrangement. This is an arrangement entered into between members of the one family for the benefit of the family as a whole, as, for instance, one made to preserve the family property or the honour of the family, or in order to avoid disputes and litigation. The Courts view any such arrangement with favour and will uphold it unless there are strong reasons for doing otherwise; and they will not enquire whether the consideration received by any party to it was adequate or inadequate unless the facts point to the conclusion that the party either did not know what he was about or was the victim of an imposition. But any material fact which is known to any one of the parties must be communicated to the others before the agreement is arrived at; and non-communication of any such fact, as well as any material misrepresentation by any party, is a ground for setting the agreement aside. Mutual mistake by the parties as to their rights is not in general a ground for setting aside the agreement, but where the mistake goes to the root of the matter, as where the agreement consists of a compromise of rights which are in fact non-existent, then the agreement will not be upheld. The agreement which leads to the arrangement is what the Courts look to; and a deed of family arrangement which does not give effect to the agreement upon which it purports to be based will be rectified or, if necessary, set aside unless there have been such laches and acquiescence (q.v.) as to render either course inequitable. A family arrangement is not a voluntary conveyance for the purposes either of bankruptcy or of the statute 13 Eliz. c. 5, if made *bonâ fide*, and will be upheld as against the creditors of any of the parties unless it was carried out with intent to defraud.

Family Bible. Entries in a family Bible which is used as a family register are deemed to be relevant evidence of any birth, death, or marriage therein recorded, when the fact of such birth, etc., is in issue, and when the entry relating to it was made by a deceased

declarant legitimately related in blood to the person whose birth, etc., is in issue and before that question became in issue.

Famosus libellus. A scandalous libel. It would now be called simply a libel (q.v.).

Fanatio; Mensis fanationis. In the ancient forest law this was the "fawning month," (comprising the thirty days from 6th July in each year), during which deer could not be hunted. See FENCE MONTH.

Farcy. A form of glanders (q.v.).

Fardel; Fardella terræ. An obsolete measure of land which is stated by different ancient authorities to have been either a fourth or an eighth of a yardland (q.v.).

Farding Deal; Farundel. An obsolete measure of land, stated to contain a quarter of an acre, and therefore corresponding apparently to the modern rood (q.v.).

Farinagium. This, more particularly in Jersey, meant a toll of meal or flour or a mill. Compare MOLITURA.

Farleu. This anciently meant the money payment for which a heriot (q.v.) had been commuted. In some Devonshire manors it meant the best chattel which, under the custom of the manor, was taken instead of a heriot.

Farm. A house and a considerable tract of land let for agricultural purposes. Anciently it meant the chief messuage in a village.

Farm Let. This forms part of the words (used in old leases), "doth hereby demise, sett and to farm let."

Faro; Pharaoh. An obsolete card game of pure chance. See GAMING.

Farthing. See COPPER COINS; SILVER COINS.

Farthing; Farthing-dell (of Land). A measure of land (apparently quite distinct from the farding deal or farundel (q.v.)) about the extent of which we know only that it must have been considerable, for in one Devonshire manor six farthings of land appear, from an ancient survey, to have been held at the rent of £126.

Farthing-land. This is quite distinct from a "farthing of land" (q.v.). At Rotherfield, in Sussex, it means copyhold which descends to the youngest son, and, in default of sons, to the youngest daughter.

Farthing of Gold. See GOLD COINS.

Farydon, or Farnqudon, Inn. Down to about 1484, this was the name of the inn, afterwards known as Serjeants' (q.v.) Inn, which stood on the eastern side of Chancery Lane, next to Clifford's Inn. (See INNS OF CHANCERY.) The name was derived from that of one Faryndon who, with one Sharle, was the lessee of the inn on behalf of the judges and serjeants-at-law.

Fasaculus de superioritate maris. The Roll [of Records] relating to the lordship of the sea. It is a collection of fourteenth-century records relating to Admiralty matters. See Vol. VI. of the Selden Society series at pp. XXX-XXXVI.

Fast Days. The still unrepealed statute 5 & 6 Edw. 6, c. 3, ss. 2, 5, directs that the days before Christmas Day, Easter, Ascension Thursday, Whit Sunday, the Purification, Lady Day, and all the feasts of the Apostles, "other than of St. John the Evangelist and Phillip and Jacob," shall be kept as fast days (unless the day before the feast be a Sunday, in which case the preceding Saturday is to be the fast day), and provides that persons failing so to do may be punished with the "censures of the Church." This enactment has long been obsolete. The Book of Common Prayer makes also the eve of All Saints' Day (1st November) a fast day.

Days of general fast, humiliation or thanksgiving (q.v.) may be declared by royal proclamation. The last of such days was in 1857. The Bills of Exchange Act, 1882, s. 92, declares any such day to be a non-business day, like Sunday, Good Friday, Christmas Day or any Bank Holiday; the R.S.C., Ord. 63, r. 6, and the County Court Rules, Ord. 51, r. 18, also treat any such day as a *dies non*.

Fasting, or abstinence, is prescribed by the Book of Common Prayer (1) during the whole of Lent (q.v.); (2) on the Ember Days (q.v.); (3) on the Rogation Days (q.v.); and on all Fridays other than a Friday which happens to be Christmas Day; but not even ecclesiastical censures can be directed against the somewhat large number of persons who fail to fast or abstain on these days.

Fastens-een, -eve, -even, -Tuesday. Shrove Tuesday (q.v.).

Fastermans; Fasting-men. Before the Conquest these were men eligible to be sureties that other men would keep the peace. See FRANKPLEDGE.

Fatetur facinus qui judicium fugit. (He who flies from trial confesses his guilt.) See FUGAM FECIT.

Fautors. Anciently this meant favourers or supporters of others, and especially of criminals. Hence it came to mean abettors (q.v.).

Favorabilia in lege sunt fiscus, dos, vita,

libertas (*Jenk. Cent.* 28). Another form of CAUSAE DOTIS, VITÆ, ETC. (q.v.).

Favorabiliores rei potius quam actores habentur (*D.* 50, 17, 125). (The law is on the side of the defendant rather than on that of the plaintiff.) And so the Court would not give judgment against a defendant, even though he were in default, if it appeared from the record that the plaintiff had no cause of action. Compare MELIOR EST CONDITIO POSSIDENTIS.

Favorabiliores sunt executiones aliis processibus quibuscunque (*Co. Litt.* 289). (Executions are more preferred than all other processes whatever.) This is one of a number of similar maxims on the page referred to above, such as EXECUTIO EST FRUCTUS, ETC. (q.v.).

Favour, Challenge For. See CHALLENGE.

F.C.S. (Free of capture and seizure). These letters are used in policies of marine insurance to indicate that the underwriter is not to be liable for capture or seizure of either the ship or the cargo resulting from the action whether of the King's enemies, or of pirates, or of the owner's own Government or of a foreign Government.

Feal. This meant in Scotland a feudal tenant who owned fealty (q.v.). In England the word occurs only in the oath to be *feal and leal* (faithful and loyal) to the lord, which tenants holding by knight service had to take.

Fealty is a service which every free tenant (except tenant in frankalmoign) is in theory bound to perform to his feudal lord. It is therefore an incident to every seignory (q.v.), and is due on every change of the tenancy or the seignory, but it is in practice completely obsolete. The ceremony of fealty consisted in the tenant taking an oath of fidelity to the lord. A bishop still performs it. (See HOMAGE.)

Fealty is also one of the incidents of tenure due from every copyhold tenant to the lord of the manor in respect of his customary tenement. It consists in swearing to be faithful in performing the services of the tenancy, and may be required on every change of the lord or tenant; but in practice it is always respited. See ALLEGIANCE; SUBTRACTION; SERVICE.

The word is derived, through the Norman French, from the Latin *fidelitas* (fidelity).

Fear. See DURESS.

Feasance means "doing." See MALFEASANCE; MISFEASANCE; NON-FEASANCE; SERVICE.

Feasts. These are the days, the eves of which are, in theory, fast days according to our law, and also a number of other days, including Sundays, Christmas Day, and several week days, which are enumerated in the "Table of all the Feasts" given in the Prayer Book. That table is almost identical with the list of feasts given in the statute 5 & 6 Edw. 6, c. 3, s. 1, which commands all feasts "to be kept holy day." See CORPUS CHRISTI.

See the statute 27 Hen. 6, c. 5, forbidding fairs and markets on certain feasts.

Fee is applied to property to denote that it has the quality of descending to the heirs of the owner for the time being if he does not dispose of it during his life or by his will, supposing he has power to do so. Thus an office or annuity in fee is one which descends to the heir of the holder for the time being on his death intestate. (See ANNUITY; OFFICE.) The term is, however, chiefly of importance as applied to land, estates of inheritance in land being called estates in fee.

Fees are of two principal classes, fee simple and fee tail.

An estate in fee simple is the greatest estate or interest which the law of England allows any person to possess in landed property. The owner of an estate in fee simple is practically absolute owner of the land or other realty; he may put it to any use, lease it, mortgage it, sell it or give it away; if he dies without having disposed of it during his lifetime or by his will it descends to his heir according to the rules of descent (q.v.)

An estate in fee simple is properly created by the words "and his heirs" or merely the words "in fee simple" (Conveyancing and Law of Property Act, 1881, s. 51) following the name of the grantee: thus a conveyance of land to "A. and his heirs" or to "A in fee simple" gives A. an estate in fee simple. A conveyance to "A" without more, or to "A. for ever," or to "A. and his assigns," or the like, without the word "heirs," or to "A. in fee," gives A. only an estate for life. In a devise by will, however, neither the word "heirs," nor the words "in fee simple," are required, as a gift of land by will to A. without more vests in A. all the estate which the testator had, whether a fee simple or a less estate. In a conveyance to a corporation sole (q.v.) the word "successors" is substituted for "heirs." The word is not required in a conveyance to a corporation aggregate (q.v.), but it is not uncommonly so used.

An estate in fee simple may be either *absolute*, as where land is given to a man and his heirs or in fee simple, without more, or *determinable*, where some words are added which may put an end to it on the happening of a certain event. This may be (1) where a

condition is added: thus, where an annuity is granted to a man and the heirs of his body, he has a fee simple conditional on his having issue instead of having an estate tail (q.v.) as he would have if the thing granted were freehold land: if he has issue, the condition is performed, so that he can alien or charge the annuity; but if he does not alien it, it descends to his eldest son, subject to the same condition: (2) by limitation, as where land is granted to A. to hold to him and his heirs so long as C. has heirs of his body; this is a fee simple qualified (formerly also called a base fee): (3) by construction of law, as where a person seised of an estate tail grants the land to A. and his heirs, in which case A. has an estate in fee simple so long as the tenant in tail has heirs of his body, but as soon as those heirs fail, A.'s estate comes to an end. This, though sometimes called a fee simple qualified or determinable, is more properly called a base fee. See ENLARGEMENT.

As to estates in fee tail, see ESTATE TAIL.

Formerly "fee" also signified the land itself. Thus, a "knight's fee" was the quantity of land which, as Coke puts it, "goeth to the livelyhood of a knight," and seems to have consisted of lands worth £20 a year.

The word is derived from the Norman French, *fee, fé, fié;* low Latin, *feodum*, from Gothic, *faihu*, property (modern German *Vieh*, cattle). *Feodum* originally meant land granted in consideration of services to be rendered, as opposed to *allodium*, or land held absolutely.

Feeble-minded Persons. The Mental Deficiency Act, 1913, s. 1 defines feeble-minded persons as "persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protection or for the protection of others or, in the case of children, that they, by reason of such defectiveness, appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools." See IMBECILE; MENTAL DEFICIENCY.

Feed. See ESTOPPEL.

Fee, Expectant. See ESTATE.

Fee-farm Rent. A perpetual rent issuing out of lands held in fee simple, reserved when the lands were granted, and payable by the freeholder. Coke says that a perpetual rent, if it is to be called a fee farm rent, must be not less than one-fourth of the annual value of the land at the time that the rent was reserved, but the better opinion is that the amount of the rent is immaterial.

A tenant in fee farm, said Britton about 1290, owes no service not expressly reserved, except fealty, and this is still the case. Fee farm rents granted before the statute *Quia Emptores* (1290) are rents service; those granted since are rent charges or rent seck, because since that statute no one can grant land to be held of himself in fee simple. (See RENT; QUIA EMPTORES; SUBINFEUDATION; TENURE.) It is, however, a question whether the term fee farm rent is properly applicable to rents created since the statute.

Fee-simple. See FEE.

Fee-tail. See ESTATE TAIL.

Feigned Issues. Formerly questions of fact arising in the course of an action could be decided upon what was known as a feigned issue, that is to say, by stating that the parties interested in the matter had made a wager upon the truth or falsehood of the proposition or propositions, setting out the fact or facts in dispute, and then having the issue tried by a jury. This procedure was either directed by a judge of the superior Courts or else was expressly authorised by statute. It was abolished by the Gaming Act, 1845, s. 19, which enacted that, instead of the procedure by feigned issue, a writ of summons should be sued out upon which the issue should be tried when any superior Court desired to send it to a jury for decision. The procedure is now governed by R. S. C., Ord. 34, r. 9, which provides that where parties to a cause or matter are agreed as to what facts are in dispute, then the Court or a judge may direct that the issue be tried by a jury. No writ of summons is now required.

Feint, or "feint in law." See ACTIONS.

Felagus. In the early Anglo-Saxon period this meant one who was bound in the decennary (q.v.) as surety for the good behaviour of another: he is mentioned in Leg. Inae, c. 15.

Felix qui potuit rerum cognoscere causas (*Co. Litt.* 231). (Happy is he who can ascertain the causes of things.)

Fellow-servants. See COMMON EMPLOYMENT.

Felo de se is a person who murders himself, that is to say, commits suicide. See MURDER.

Felonia implicatur in quâlibet proditione (3 *Inst.* 15). (Every treason involves felony.)

Felony. At common law, every species of crime a conviction for which occasioned the forfeiture of the lands or goods of the offender, and to which a punishment might be added

according to the degree of guilt, was called felony. Forfeiture for conviction, however, has been abolished (Forfeiture Act, 1870) (see FORFEITURE); and several offences have been made felonies by statute which were not felonies at common law.

Felony is punishable in various modes, as by death or penal servitude, many felonies having special punishments attached to them. Where no punishment is specially provided, felony is punishable by penal servitude for not less than three or more than seven years, or imprisonment for not more than two years, with or without hard labour (Criminal Law Act, 1827, s. 8; Penal Servitude Act, 1857, s. 2; Penal Servitude Act, 1891, s. 1). (See RECOGNIZANCE.) A felon is also in general incapacitated from holding certain offices (Forfeiture Act, 1870, s. 2).

"Felony," strictly speaking, includes treason (q.v.), although the terms are generally used as opposed to one another. Instances of felony in the more usual sense of the word are: piracy, murder, manslaughter, rape, larceny, robbery, burglary, arson, some kinds of assault, and certain acts resembling treason.

The word comes through the old French *felun, felon*, from the low Latin *felo*, which meant a vassal guilty of disobedience or breach of fidelity towards his lord; the ultimate derivation is unknown.

See ACCESSORY; ARREST; CHALLENGE; COMPOUND; JUDGMENT; JURY; MISPRISION; PEER; SEISINA HABENDA, DE; TREASON-FELONY.

Feme Covert is a married woman. As to the status and disabilities of a married woman, see MARRIAGE; COVERTURE; SEPARATE ESTATE; ENGAGEMENT.

Feme Sole is an unmarried woman, whether a spinster or a widow.

Feminæ non sunt capaces de publicis officiis (Women are not able to hold public offices.) But this is not now the case.

Feminine. See MASCULINE.

Fence. The obligation on the owner of land to keep it fenced may exist either at common law, or by virtue of a special obligation, or by statute. At common law a proprietor of land is only bound to keep up fences round his land if they are required to prevent his cattle from trespassing on the land of his neighbours. An owner of land may, however, be subject to a prescriptive obligation to keep the fence between his and his neighbour's land in repair. See QUASI-EASEMENT.

A railway company, when subject to the provisions of the Railways Clauses Consolidation Act, 1845 (ss. 68 *et seq.*), is bound to construct and maintain fences between it's line and the adjoining lands.

See further as to fences under titles BOUNDARIES; PARTY WALL.

Under various Acts of Parliament the duty is cast on owners of mines and machinery to keep them fenced, so as to prevent injury to persons coming near them. The most important provisions as to mines and mining machinery are contained in the Metalliferous Mines Regulation Act, 1872, s. 23, and in the Coal Mines Act, 1911, ss. 26, 37, 55. The Factory and Workshop Act, 1901, s. 10, contains provisions as to the fencing of machinery in factories, etc.

Stealing or maliciously injuring or destroying fences is an offence, punishable on summary conviction, under the Malicious Damage Act, 1861, s. 25, or the Larceny Act, 1861, s. 34. See also QUARRIES.

Fence Month; Fence Season; Fence Time. Formerly the term "fence month," or "defence month," also known as the *mensis vetitus* or *mensis prohibitionis*, was more particularly used as an equivalent for *fanatio* (q.v.). Now the fence month, fence time, or fence season mean the different annual close seasons during which various kinds of game and freshwater fish may not be killed or taken.

Fengeld. A levy made in Anglo-Saxon times for what would now be called the defence of the realm.

Feod; Feodum. The older forms of *feud, feudum*. All four words meant land held by a feudal tenant: they meant also the grant of the land and the interest of the feudal tenant. See FEE.

Feodal. Of or belonging to the feod (q.v.).

Feodal System. The feudal system (q.v.).

Feodality. Fealty (q.v.).

Feodary; Feudary. An officer of the Court of Wards and Liveries (q.v.) whose office ceased to exist when that court was abolished. He attended before the inquest of office (q.v.) to give evidence as to the tenure and value of lands, assigned dower to the "King's widows" or widows of tenants by knight service, and received the rents of lands which belonged to wards.

Feodary, or feudary, also meant a feudal tenant.

Feodi firma. Fee-farm (q.v.). Usually found in the combination *in foedi firma*.

Feodum antiquum. An ancient fee. A fee (q.v.) which had descended to the feudal tenant from an ancestor. Compare FEODUM NOVUM.

Feodum laicum. A lay fee (q.v.).

Feodum militis. A knight's fee. See FEE.

Feodum novum. A new fee; which meant a fee held by the feudal tenant to whom it had been first granted. Compare FEODUM ANTIQUUM.

Feoffee to Uses. Before the Statute of Uses (q.v.) was passed in 1535, this was a person to whom a feoffment (q.v.) had been made to the use of a *cestui que trust*. This left the legal estate in the feoffee, while the *cestui que trust* became the beneficial owner. The statute had the effect of making the feoffee a mere conduit pipe for conveying the legal seisin to the *cestui que trust*, so that a feoffment to A. to the use of B. gave the legal seisin to B. the moment the enfeoffment took place, just as a modern deed of grant to A. to the use of B. gives B. the legal estate. See USES.

Feoffment; Feoffor; Feoffee. A feoffment is a mode of conveying a freehold estate in possession in land from one person (the feoffor) to another (the feoffee). It was at one time almost the only mode of conveying freehold land in possession, but it is now practically obsolete, because the same object can, in most cases, be obtained by simpler means. Almost the only case in which a feoffment is now specially required is where an infant tenant of gavelkind land wishes to dispose of his estate: this he can do by feoffment at the age of fifteen; but even he must now put the feoffment in writing in order to comply with the Statute of Frauds (q.v.); he must moreover be in actual possession; and the feoffment must be for a valuable consideration not being an under-value.

Originally a feoffment was merely the overt or public delivery of the possession of land by the owner (the feoffor) to the grantee or purchaser (the feoffee) and consisted of the ceremony called livery of seisin (q.v.). But, for the sake of convenience, it became usual to put the terms of the conveyance in writing, as a record of the transaction: this writing was called the charter or deed of feoffment. The Statute of Frauds (q.v.) made a writing necessary in every case; and now, by the Real Property Act, 1845, s. 3, every feoffment (except one made under a custom by an infant) is void at law unless made by deed. The livery of seisin is of course still necessary, but if livery be omitted the charter of feoffment will take effect as a grant under the Real Property Act, 1845.

Formerly a feoffment was an assurance of great power, for it not only cleared (that is, destroyed) all disseisins, abatements, intrusions and other wrongful or defeasible estates, where the livery of seisin by the feoffor was lawful, but also operated by wrong, or tortiously, where the feoffor granted a greater estate than he was entitled to, so as to confer on the feoffee the whole estate purported to be granted. Thus, if a tenant for his own life made a feoffment of the land in fee simple, the feoffee became seised of an estate in fee simple by wrong, which was good against everyone except the reversioner: as regards him, the feoffment, being unauthorised, operated as a forfeiture of the tenant for life's estate, and entitled him to re-enter and take possession of the land. But by the Real Property Act, 1845, s. 4, the tortious operation of a feoffment was abolished, and now a feoffment in fee simple by a tenant for life merely passes the feoffor's life interest and does not work a forfeiture.

See CONVEYANCE; GRANT; OPERATIVE WORDS, USES.

The word feoffment is the Norman French *feoffament*, from *feoffer*, to grant a fee or feudal estate. See FEE.

Feræ naturæ. See ANIMALS FERÆ NATURÆ.

Ferdella. The same, apparently, as fardel (q.v.).

Ferdfare. This, as used in Fleta, appears to mean an exemption from military service.

Ferdingus. The same as Cotsethus (q.v.).

Ferdwit. This, as used in Fleta, means a fine for manslaughter committed while on military service. It also meant a fine for failure to perform military service.

Fere secundum promissorem interpretamur (*D.* 45, 1, 99). (We generally decide in favour of the *promissor*.) This was a maxim of the Roman law: it cannot be applied in our law.

Ferial Days. This properly means days which were in the nature of *feriae*, or feasts. But in the statute 27 Hen. 6, c. 5, the expression is used in the sense of working days, as distinguished from Sundays and the "high and principal feasts" (q.v.), such as the Feast of the Ascension; and such use of the expression was common at that time.

Ferling. A farthing; the fourth part of a ward in a borough: the fourth part of an acre of land. Obsolete in all senses.

Ferlingata. A quarter of a yardland. The yardland contained forty acres.

Ferlingus; Ferlingum. A furlong (q.v.).

Ferm; Fermholt. The same as farm (q.v.).

Fermary. Anciently this meant a hospital (q.v.).

Fermisona; Fermison. The season between

11th November and 2nd February. It is stated by Jacob to have been the winter season for killing deer: by Murray it is stated to be a close season for male deer: and both rely upon a permit of 1248 given for the killing of one hart during the fermison. Murray would appear to be right.

Fernigo. Anciently this meant waste land covered with ferns or bracken.

Ferramentum. Ironwork. The word was generally appropriated to the iron fittings of a mill, and was occasionally, as in the *Liber Niger Herefordiæ*, used to mean the ironwork of three ploughs.

Ferrets. Ferrets were not the subject of larceny at common law: but since the enactment of the Larceny Act, 1916 (see ANIMALS FERÆ NATURÆ), a ferret kept in a cage, etc., is clearly the subject of larceny, although a ferret lost whilst rabbiting would, while not under control, appear to be still incapable of being stolen.

Ferry. The right to keep a boat for ferrying passengers, to charge tolls for so doing, and to prevent other persons from setting up another ferry so near and in such a state of facts as to diminish the custom, is a franchise (q.v.) It can be created only by grant from the Crown, by prescription, or by statute.

It is not a disturbance of ferry if some person other than the ferry-owner ferries persons across in order to provide for the needs of passengers more numerous than those whom the ferryman can carry. What the ferry-owner gets is, in fact, a monopoly of such custom as existed when the ferry was created. What he does not get is, for instance, the monopoly of carrying passengers between the two parts of a populous city occupying what had been a thinly populated agricultural area when the ferry was created.

Under the Ferries (Acquisition by Local Authorities) Act, 1919, power is given to local authorities to acquire existing ferries by agreement.

Fertilisers and Feeding Stuffs. The Fertilisers and Feeding Stuffs Act, 1906, provides safeguards for the purity of all artificial manures and all artificial foods for cattle and poultry and authorises the Ministry of Agriculture and Fisheries to make regulations on the subject.

The Fertilisers (Temporary Control of Export) Act, 1920, empowered His Majesty to prohibit by Order in Council the export of certain fertilisers specified in the Schedule. The Act (see s. 2) was in force until only 31st December, 1922.

Fesance. The same as feasance (q.v.).

Festinatio justitiæ noverca (*Hob.* 97). (Haste is the stepmother of justice—which is only a ponderous way of saying that hasty decisions work injustice.)

Festing-men. See FASTING-MEN.

Festing Penny. Earnest-money, formerly paid in some places in the North of England to a servant upon his being engaged. The term corresponds to the Norse *faeste penge*, the meaning of which is identical. The word *festing* is derived from a Saxon word meaning to make fast or secure.

Festinum remedium (A speedy remedy.) The action of dower (q.v.), for instance, was so described; so also were the actions of assise of *darrein presentment*, *mort d'ancestor*, or *novel disseisin* (q.v.).

Festum stultorum. The Feast of Fools; New Year's Day. More usually known as *Caput Anni*.

Feu. See FEO.

Feuage = Fuage.

Feud, in the Middle Ages, was a grant of land by a feudal superior or lord, to be held by the grantee (the feudal inferior or tenant) in return for services to be rendered by him. The word is used to signify the interest of the tenant, and also the land itself. (See FEE.) The word, in these senses, is derived from *feudum* or *feodum* (q.v.).

The word, as a derivate of the Anglo-Saxon *fœdhe*, was also used to mean, first enmity and then a quarrel.

See BENEFICE.

Feudal System is the name given to certain institutions which prevailed in the principal States of Europe during the Middle Ages, and regulated both the tenure of land and the political and social system in each State. As to the land, the peculiarity of the feudal system was the division of the ownership. The absolute or nominal ownership (*dominium directum*) was in one person, the lord or feudal superior; while the occupation, use and benefit of the land (*dominium utile*) was in another person, the tenant or feudal inferior. In consideration of having the use of the land, the tenant rendered his lord certain services (q.v.), which in the feudal system proper were principally of a military nature, and the lord was further entitled to certain incidents or casual profits. (See INCIDENTS.) With regard to the social and political system, the relation of landlord and tenant was a mutually protective one: that is, each was bound to assist and protect the other in case of danger (see FEALTY); and it was exclusive, that is, no one

had any right to interfere between them, though the lord himself might be tenant to a yet higher superior: thus, A. might be tenant to B. and B. tenant to C., but C. would have nothing to do with A. Hence, in the pure feudal system, the king or other head of the State was to a great extent merely a feudal lord, having no right to the allegiance of his tenants' tenants: but this was never so in England; for although since the Norman Conquest, when the feudal system was introduced, all lands in England, as Coke puts it, "are holden mediately or immediately of the king," yet he has always been the feudal superior not only of his tenants in chief but also of their tenants and tenants' tenants. It will be seen from the titles TENURES, INCIDENTS, ESTATE, SEIGNORY, SUBINFEUDATION, that but few traces of the feudal system now survive, except in the rules of descent, in the operative words required to pass an estate of inheritance by deed (see FEE; HEIR), and in the law of copyholds.

Feud-bote. Stated by Jacob to have meant a recompense for joining in a feud or quarrel.

F.G.A. These letters, in polices of marine insurance, denote "free from general average," which means that the underwriters are not liable to make good general average (q.v.) losses. They are also used to mean "foreign general average," that is to say, average adjustment (q.v.) made at a foreign port which is the port of destination of a ship.

Fiat, in procedure, formerly meant a memorandum written on a document by a judicial officer, giving leave to take some step. (Latin = "Let it be done.") It is now generally used as meaning a memorandum as to an order having been made with regard to the matters mentioned in R.S.C. Ord. 52, r. 14. In Chancery practice, when a petition is presented, a registrar (see ANSWER) writes a *fiat* on it, directing all parties to attend on a certain day when the petition will be heard.

In criminal procedure, before the abolition of error (q.v.) a writ of error could not be sued out unless the Attorney-General granted his *fiat* for that purpose. The word is also in general use as meaning the leave of the Attorney-General to do something or to take proceedings which, as many modern statutes provide, cannot be done or taken without such leave. Thus under the Patents and Designs Act, 1907, s. 25 (3), a petition for the revocation of a patent can be presented only by either the Attorney-General or some person authorised by him: and proceedings under the Punishment of Incest Act, 1908, cannot (see s. 6) be taken, except by the Public Prosecutor, without the sanction of the Attorney-General. See GREAT SEAL.

— **Fiat justitia.** (Let justice be done.) Formerly the royal warrant to bring a writ of error in Parliament (see ERROR) was issued only after a petition had been presented and the King had written "*Fiat Justitia*" thereon. The same words are used, nominally by the King, but really by the Home Secretary (Petitions of Right Act, 1860, s. 2), as the endorsement without which a petition of right (q.v.) cannot be heard; and they had before 1860 been so used in accordance with the common law procedure as to petitions of right, unless, instead of this general endorsement, there was, as sometimes happened formerly, a special endorsement directing that such and such a thing should be done.

— **Fiat justitia, ruat cœlum** (4 *Burr.* 2562). (Let justice be done, though the heavens fall.) That is to say, a Court must do its duty without regard to consequences.

— **Fiat quod prius fieri consuevit** (*Jenk. Cent.* 167). (Let that be done which hitherto has been accustomed to be done.) Compare NIHIL TEMERE, ETC.

— **Fictio legis non operatur damnum vel injuriam** (*Palm.* 354). (A legal fiction does not work loss or injustice.)

Fiction. A fiction is a rule of law which assumes as true, and will not allow to be disproved, something which is false but not impossible. Formerly the practice and jurisdiction of the Courts rested largely on fictions: thus, the Court of King's Bench acquired jurisdiction in actions for debt, etc., by surmising (that is, feigning) that the defendant had been arrested for a trespass which he had never committed, and then allowing the plaintiff to proceed against him for debt. The Court of Exchequer (see EXCHEQUER) also acquired a jurisdiction which it *prima facie* was not entitled to exercise, by permitting the plaintiff in certain actions to plead that he was a debtor to the King, and that by reason of the cause of action pleaded he had become less able to pay his wholly fictitious debt to the King. See COMMON PLEAS; COLOUR; EJECTMENT; FEIGNED ISSUES; RECOVERY.

Fictitious Payee. "Where the payee" [the person to receive the money] "is a fictitious or non-existing person the bill may be treated as payable to bearer" (Bills of Exchange Act, 1882, s. 7 (3)).

Fidem mentiri. In the reign of Henry I., when a tenant broke his oath of fealty to his

lord he was said *fidem mentiri* (to belie his faith).

Fiduciary. A person is said to stand in a fiduciary relation to another when he has rights and powers which he is bound to exercise for the benefit of that other person. Hence he is not allowed to derive any profit or advantage from the relation between them, except with the knowledge and consent of the other person. Such is the relation between trustee and *cestui que trust*, solicitor and client, principal and agent, and generally wherever from the position of two persons, one of them reposes confidence in the other. Promoters and directors also stand in a fiduciary relation to their companies.

Fief d'hauberk. Anciently this meant a knight's fee (see FEE). Literally it meant a fee of the hauberk or helmet.

Field-ale; Filkdale. A levy of drink for the consumption of an officer of the forest. It had been prohibited by the time of Bracton (q.v.).

Field Reeve is an officer elected by the owners of a regulated pasture (see PASTURE) to keep in order the fences, ditches, etc., on the land, to regulate the times during which animals are to be admitted to the pasture, and generally to maintain and manage the pasture subject to the instructions of the owners. See the Inclosure Act, 1845, s. 118.

Fi. fa.; Fieri facias; Fieri feci. A *fieri facias* or *fi. fa.* is a writ of execution to levy a judgment debt. (See R.S.C., Ord. 43.) It commands the sheriff or other officer to whom it is directed to levy (or *cause* [a levy] *to be made*) of the goods and chattels of the debtor (including his chattels real) the sum recovered by the judgment with interest. In executing the writ, the officer enters upon the premises in which the execution debtor's goods are (if he can do so peaceably, and without breaking open any outer door), and leaves one of his assistants in possession of them. After the seizure, the officer gets an auctioneer to make an inventory of the goods, and to remove and sell them, or to sell them on the premises, if the debtor, or the person on whose premises the goods are, consent to it. When the writ becomes returnable (see RETURN), the sheriff returns either *fieri feci*, *i.e.*, that he has levied the sum named in the writ, or a part of it, which he is ready to pay to the execution creditor; or that he has taken goods which remain unsold for want of buyers (see YENDITIONI EXPONAS; DISTRINGAS NUPER VICECOMITEM); or *nulla bona*, *i.e.*, that the execution debtor has no goods within his bailiwick. See WRIT; LEVARI FACIAS.

Fieri facias de bonis ecclesiasticis. When the sheriff, to a common *fieri facias*, returns *nulla bona*, and that the defendant is a beneficed clerk not having any lay fee, the plaintiff may sue out a *fieri facias de bonis ecclesiasticis*, directed to the bishop of the diocese (see Ord. 43, rr. 3, 4), or to the archbishop, during a vacancy of the bishop's see, commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese the sum therein mentioned. This is done by issuing a sequestration (q.v.) to levy the debt out of the tithes and other profits of the defendant's benefice.

Fieri facias de bonis testatoris is the writ issued on an ordinary judgment against an executor when sued for a debt due by his testator; if the sheriff returns to this writ *nulla bona*, and a *devastavit* (q.v.), the plaintiff may sue out a *fieri facias de bonis propriis*, under which the goods of the executor himself are seized. See DEVASTAVIT; JUDGMENT.

Fifteenths. This was a tax of, theoretically, one fifteenth of the moveable property of every subject, granted from time to time to the king. It was virtually what would now be called a levy on capital, except that real estate escaped. Fifteenths originated in the twelfth century and are last heard of in the reign of James I. In the reign of Edward III. the amount which the inhabitants of each vill or township were to pay as a fifteenth was assessed; and this amount was not subsequently increased, so that gradually, as the national wealth increased, the tax became very much less than one fifteenth of the value of the moveables in the kingdom.

Fightwite. In Anglo-Saxon times this meant a fine for fighting to the disturbance of the peace. The fight in respect of which it was imposed must apparently have been serious, for the amount was no less than one hundred and twenty shillings, which represented a considerable sum at that period.

Filacer; Filazer; Filizer. Filacers were officers of the Courts of Common Pleas, King's Bench, and Exchequer. Jacob, writing in 1749, states that there were fourteen of these officers in the Court of Common Pleas; their offices had originated before the statute 10 Hen. 6, c. 4, in which they are mentioned. Filacers of the two other Courts were of later origin. All these filacers, whose duty it was to file original writs and to issue process thereon, were abolished by the Superior Courts (Officers) Act, 1837, which created the Masters

of the King's Bench, etc. (q.v.). See PROTHONOTARY.

File. A file is literally a piece of string or wire passing through papers relating to the same matter, to keep them together. It seems to have been the practice in olden times to fasten together in this way writs and other papers in the offices of the Courts; now, however, documents which are filed are merely placed in pigeon-holes or tied in bundles. Affidavits and other documents requiring filing are handed to the proper officer with the necessary stamps.

A document will be ordered to be taken off the file if it is scandalous or an abuse of the forms and proceedings of the Court.

Filiatio non potest probari (*Co. Litt.* 126). Evidence cannot be adduced to prove that a man is the son [of his mother's husband], for the law will presume that he is, unless the facts negative the presumption. Compare PATER EST, etc.

Filicetum. Anciently this meant ground covered with ferns or bracken.

Fillage. A duty formerly payable on certain cargoes brought to the Port of London. See METAGE.

Filum aquæ; Filum viæ. See AD MEDIUM FILUM VIÆ.

Final. See INTERLOCUTORY; JUDGMENT.

Final Interlocutory Decree. See DEFINITIVE SENTENCE.

Finance Act. Since 1893 the annual Act imposing or continuing various duties has been entitled the Finance Act, 1894, or as the case may be. Before 1894 the corresponding title was the Customs and Inland Revenue Act, 1893, or as the case might be.

Financial Year. This expression is defined in the Interpretation Act, 1889, s. 22, which provides that unless the contrary intention is expressed it shall, as regards the Consolidated Fund, or moneys provided by Parliament, or the Exchequer, or imperial taxes or finance, mean the twelve months ending 31st March.

Finder. In the statutes 18 Edw. 3; 14 Rich. 2, c. 10.; and 1 Hen. 4, c. 13, this is used as meaning, apparently, an officer performing duties somewhat similar to those of a searcher (q.v.).

Finder of Lost Property, like every other possessor of property, is entitled to the possession of it against all persons, except the true owner. (See POSSESSION.) If a person, when he finds lost property, knows whom it belongs to, or knows that the owner can be found, and appropriates it for himself, he commits larceny. See DOGS.

Finding. A finding is a conclusion upon an inquiry of fact. Thus, when the jury in an action return a verdict, they find either generally, *i.e.*, for one of the parties, or specially, *i.e.*, as to certain facts. (See FACT; VERDICT.) Frequently, too, by consent of the parties, questions are drawn up and put to the jury in an action, and their answers are termed findings. Decisions upon questions of fact are also termed findings when they are come to by substitutes for juries, *e.g.*, a judge sitting without a jury. See TRIAL.

Fine.—I. In criminal law, a fine is a sum of money ordered to be paid to the King by an offender, as a punishment for his offence. A fine is at common law one of the punishments for misdemeanours, and it has been made a punishment for several offences by modern statutes, which in many cases provide that when any person has been convicted of an indictable misdemeanour, the Court may, in addition to or in lieu of any other punishment authorised by the particular Act, inflict a fine upon the offender.

The superior Courts (see COURTS) have a general power of imposing pecuniary mulcts for disobedience to their orders, not only on their own officers and on parties to suits depending before them, but also on strangers. See AMERCEMENT.

II. In the law of tenure, a fine is a money payment made by a feudal tenant to his lord. The only existing fines of any importance occur in copyhold lands, where upon a change in the tenancy a fine is commonly due to the lord. The most usual fine is that payable on the admittance of a new tenant, but there are also due in some manors fines upon alienation, on a licence to demise the lands, or on the death of the lord, or other events. Fines are of two kinds, arbitrary and certain.

A fine certain may be fixed by the custom at a particular sum for every admittance, when it is called a "general fine"; or at so much for every acre, or the like; or it may be ascertained by reference to some other standard, as where the tenant is to pay a year's value for a fine. The amount of an arbitrary fine is not left to the discretion of the lord, except in those cases where the grant is purely voluntary, as where a copyhold has come into the ownership of the lord, or where a copyholder for lives, without right of renewal or power of nominating a successor, surrenders his estate for the purpose of putting in more lives. In other cases the fine, though arbitrary, must be reasonable; and the Court will decide what is reasonable under the particular

circumstances. In ordinary cases it must not exceed two years' improved value of the land.

A "full" fine is the highest amount which the lord can exact on an ordinary admittance, as opposed to a "small" or nominal fine: thus in some manors where a person who is already a customary tenant is admitted to other copyholds he pays only a small fine certain, *e.g.*, a penny. There are also many fines payable under particular customs and having special names: thus in some manors there is a custom for the lord of the manor for the time being to admit each tenant to his estate, which gives him the right to hold it during the joint lives of himself and the admitting lord; on the death of the lord the tenant pays what is called a "general fine" for admittance to the succeeding lord, which gives him a new estate during the joint lives of himself and the new lord, while on the death or alienation of the tenant his heir or devisee pays the lord a "dropping fine" for admittance.

One of the incidents of tenure *in capite* by knight service was that a fine was due to the king on every alienation or conveyance of the land by the tenant to another person. Fines of this kind were abolished by the statute 12 Car. 2, c. 24.

III. Before the Fines and Recoveries Act, 1833 (q.v.), there existed a fictitious judicial proceeding known as a fine, which was formerly in common use as a mode of conveying land. It was really a compromise of a fictitious suit commenced concerning the lands intended to be conveyed, and the operation (called levying a fine) was thus performed. A *præcipe* or writ (usually a writ of covenant) was sued out and the parties appeared in Court; a composition of the suit was then entered into, with the consent of the judges (see CONGÉ D'ACCORDER), whereby the lands in question were declared to be the right of (that is, to belong to) one of the parties. This agreement was reduced into writing, and was enrolled amongst the records of the Court, so that it had the effect of a judgment of the Court. On the completion of the fine a writ was issued to the sheriff of the county in which the land lay, in the same form as if a judgment had been obtained in a hostile suit, directing the sheriff to deliver seisin and possession to the person who acquired the lands. But if he was already in possession this writ was dispensed with. A fine consisted of five parts:—namely, the original writ, the licence to agree, or *licencia concordandi*, which was given by the leave of the Court, on payment of a fine to the king, called the king's silver or the *post fine*. The third part was the concord or agreement, by which it was agreed that the lands were the right of the person in whose favour the fine was levied. The fourth part was a note of the proceedings, drawn up by an officer called the chirographer; and the fifth part was the "foot" or "chirograph" of the fine, which recited the whole proceedings. This chirograph was delivered to the parties, and was legal evidence of the fine, and was retained by the purchaser as one of his title deeds. The person to whom the land was to be conveyed was called the complainant or conusee, and he by whom it was to be conveyed the deforciant (see DEFORCEMENT) or conusor (cognisor), because he acknowledged the right of the complainant.

The principal use of fines was to put an end to all adverse claims to the land after a certain period. For this purpose a fine required to be levied with proclamations, that is, to be openly and solemnly read in Court in four successive terms. A common instance of this being done was when a person had acquired a tortious fee simple by a feoffment and wished to bar the owner of the reversion; he did this by levying a fine with proclamations. Such a fine barred the claims of all persons unless they took proceedings within five years. Fines were also used by tenants in tail to effect a discontinuance of the entail (see DISCONTINUANCE), and to bar their issue in tail (see RECOVERY): and to enable a married woman to join with her husband in making a conveyance of her lands, which she could not otherwise do; in such a case the wife was examined by the judges apart from her husband in order to ascertain whether she consented freely to the conveyance.

Fines were of four kinds. The first and most usual was a fine *sur conusance* (or *cognizance*) *de droit come ceo qu'il ad de son done*, that is, a fine "on acknowledgment of right as that which he has of his gift." In other words, the fine was founded on an acknowledgment by the conusor that the conusee was entitled to the land in question by virtue of a gift or feoffment to him by the conusor. It was used for the conveyance of an estate in fee simple or freehold in possession. A fine *sur cognizance de droit tantum* ("on acknowledgment of right only") was used for passing an estate in reversion or remainder. A fine *sur concessit* ("he has granted") was where the conusor, in order, as the form ran, to make an end to all disputes, granted to the conusee a new estate by way of supposed composition. This kind of fine was principally used for granting estates for life or years. A fine *sur done, grant et*

render ("on the gift, grant and re-grant") was a double fine. It had the effect of the fine *sur cognizance de droit come ceo*, etc., and of the fine *sur concessit* combined, that is, the conusee, after the right was acknowledged to be in him, rendered or granted back to the conusor or to a stranger some other estate in the land.

Fines were abolished by the Fines and Recoveries Act, 1833 (q.v.), which substitutes simpler modes in those cases where the operation of fines was beneficial. The Real Property Limitation Act, 1833, was passed to provide for the protection of titles to land after the lapse of a certain time, without the necessity of levying a fine.

See NON-CLAIM.

Fines were so called from the words with which the record of the fine began: *Hæc est finalis concordia inter*, etc.: "this is a final concord or compromise between, etc." In the criminal law the same idea prevailed: "it is called *finis*," says Coke, "because it is an end for that offence."

See PREMIUM.

Fine adnullando levato tenemento quod fuit de antiquo dominico, De. Anciently this was a writ directed to the justices of the Common Bench, and annulling a fine levied (*i.e.*, a sale effected), to the prejudice of the lord, in respect of lands held in ancient demesne (q.v.).

Fine capiendo pro terris, etc., De. Anciently this was a writ which lay for a person who had been convicted of an offence by a jury and had been committed to prison and had his goods and lands in the hands of the king; under the writ he might obtain his discharge and the return of his lands and goods on payment of a fine.

Fine Force. A man was said to do a thing *de fine force* when he did it under compulsion and of absolute necessity.

Fine for Endowment. In early times this meant a fine which the widow of a tenant had to pay to the lord in order to obtain her dower.

Fine levando de tenementis tentis de rege in capite juxta licentiam regis, De. A writ which formerly lay to authorise the levy of a fine in respect of (*i.e.*, the sale of) lands held *in capite*.

Fine non capiendo pro pulchro placitudine, De. This obsolete writ was also known as the writ of beau-pleader (q.v.).

Fine permittendo levari de tenementis quæ tenentur de rege in capite, De. This was a writ authorising the levying of a fine in respect of (*i.e.*, the sale of) lands held *in capite*.

Fine pro redisseisina capienda, De. This was a writ which entitled one imprisoned for a redisseissin (q.v.) to obtain his liberation upon payment of a reasonable fine.

Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74). This Act was passed in order: (1) To abolish fines and recoveries and to make warranties by a tenant in tail no longer effectual for barring entails; (2) To enable a tenant in tail to bar the entail either wholly or partially by a deed enrolled, instead of by a fine or a recovery; (3) To enable a married woman, with the concurrence of her husband, to dispose of land by a deed acknowledged by her before a judge or commissioner, instead of by a fine. See DISENTAILING DEED; ACKNOWLEDGMENT OF DEEDS; FINE; RECOVERY; WARRANTY.

Fines for Alienation. See FINE.

Fines le Roy. This meant fines payable to the king. Amongst them were the fines or, as they would now be called, fees, charged upon the issue of original writs. In the middle of the eighteenth century, these fees, which varied with the amount involved in the case, were calculated according to the number of marks (q.v.). Thus, for the original writ in debt, the fine was 6s. 8d. where the amount did not exceed 100 marks, with an additional 6s. 8d. for every additional 100 marks.

Finire. (To finish.) In ancient law *finire* meant to pay a fine, and so to end the matter.

Finis finem litibus imponit (3 *Rep.* 78). A fine puts an end to legal proceedings, that is to say, a fine levied with proclamation creates an indefeasible title to land. See FINE.

Finis rei attendendus est (3 *Inst.* 51). (We must bear in mind the end which was aimed at.) And so, says Coke, where A incites B to poison C, but B instead shoots C, A is an accessory before the fact to the murder of C, because the death of C was the object of the whole arrangement.

Fird. See FERD.

Fire. The owners of houses in which fires arise accidentally and without negligence are not responsible for damage thereby caused to other persons (Fires Prevention (Metropolis) Act, 1774, s. 86; which applies to all England). At common law a man, unless he could prove that there had been no negligence on his part, had (except in the City of London: see the statute 6 Anne, c. 58, s. 7) been liable for fire originating on his land; and, notwithstanding the statute of 1774, he is still liable if negligence can be proved. The Merchant Shipping Act, 1894, s. 502, exempts shipowners from liability for damages caused by fire to goods

in their ships. Railway companies are responsible for injury not exceeding £100 caused by sparks from engines to crops (Railway Fires Act, 1905). Where goods pledged with a pawnbroker are destroyed by fire, the pawnbroker must pay to the pledgor a sum ascertained by adding to the loan and profit (or interest) twenty-five per cent on the amount of the loan, and then deducting the amount of the loan and profit (Pawnbrokers Act, 1872, s. 27).

As to policies of insurance against fire, see INSURANCE. As to fire-bote, see ESTOVERS. As to incendiary fires, see ARSON.

Firearms. For the purposes of the Firearms Act, 1920, "the expression 'firearm' means any lethal firearm or other weapon of any description from which any shot, bullet or other missile can be discharged, or any part thereof, and the expression 'ammunition' means ammunition for any such firearms, and includes grenades, bombs, and other similar missiles, whether such missiles are capable of use with a firearm or not, and ingredients and components thereof: provided that a smooth-bore shot-gun, or air-gun, or air-rifle (other than air-guns and air-rifles of a type declared by rules made by a Secretary of State under this Act to be specially dangerous) and ammunition therefor shall not in Great Britain be deemed to be a firearm and ammunition for the purposes of the provisions of this Act other than those relating to the removal of firearms and ammunition from one place to another for export" (s. 12 (1)).

For the purposes of the Gun Licence Act, 1870, "the term gun includes a firearm of any description and an air-gun or any other kind of gun from which any shot, bullet or other missile can be discharged" (s. 2). In this definition the word "firearm" must of course be read in its ordinary sense of an instrument from which a missile is projected by the explosion of gunpowder or other explosive substance; and only the same restricted meaning can be attached to the word in the Acts (other than the Firearms Act, 1920, and the Gun Licence Act, 1870), which are referred to under this title.

The Firearms Act, 1920, forbids members of the general public to have firearms (other than antique arms not for use, or, subject to permission from the police, war trophies—see s. 13) without obtaining, at a cost of half-a-crown, a "firearms certificate" (lasting for three years) from the police, against whose refusal of a certificate there is an appeal to a court of summary jurisdiction (s. 1, sch. I.); manufacturers of or dealers in firearms must be registered with the police, no pawnbroker may take a firearm in pledge, and no firearms may be sold except to a person so registered as a dealer or who holds the requisite firearms certificate (s. 2), or to anyone who is drunk or insane (s. 4); no person under fourteen can have or carry any firearm (s. 3); and in addition to these provisions there are others for which reference should be made to the Act.

The Gun Licence Act, 1870, is merely an Act to oblige those, with certain specified exceptions (see *e.g.*, VERMIN), who carry a gun, as defined in that Act, to take out, at a cost of ten shillings, a gun licence expiring on the 31st of March next following the issue thereof. Nothing in the Firearms Act, 1920 (see s. 1 (9)), relieves any person from the obligation to take out a gun licence.

Wantonly discharging firearms within fifty feet of the centre of a highway available for wheeled traffic is punishable summarily under the Highway Act, 1835, s. 72. It would appear that the use of firearms within fifty feet of the centre of the highway is not wanton, within the meaning of this enactment, if they are used for purposes which, apart from this enactment, are not unlawful and with due regard for the safety of persons on the highway.

In London it is an offence, punishable summarily, to discharge firearms wantonly in any street or public place (Metropolitan Police Act, 1839, s. 54 (15)); and under the Town Police Clauses Act (10 & 11 Vict. c. 89), s. 28, wantonly discharging firearms in a street within any urban district outside London is punishable summarily. It is obvious that only exceptional circumstances could make the use of firearms in any street or public place in London, or in any street in any other town, other than wanton.

Any person found drunk with loaded firearms in any highway or public place is punishable summarily under the Licensing Act, 1872, s. 12.

Fire-bare. In Anglo-Saxon and mediaeval times this meant a primitive kind of light-house consisting of a lofty beacon on which a fire was kindled.

Fire-bote. Fuel for household use; also called house-bote. See ESTOVERS.

Fire, Extinction of. The legislation on the subject commenced with the statute 6 Anne, c. 58, which provided that in London and within the Bills of Mortality churchwardens should fix fire-cocks at proper distances in streets and keep a "large engine and a hand

engine to throw up water for the extinguishing of fires," and that on the outbreak of fire all constables and beadles should at once proceed to the place where the fire occurred and aid in extinguishing the fire, and cause people to work at the engines. The "large engines" were primitive and ineffective machines, and the small engines seem to have been "fire-squirts," much resembling the ordinary garden syringe on a large scale. It was not until about 1725 that Newsham invented the first really effective fire-engine, which was a machine much of the same type as that in use until, about the middle of the nineteenth century, the steam fire-engine became general; and it was not until the era of the steam fire-engine that there was much of an advance on the legislation of Anne. Now the extinguishing of fires is provided for, in London by the Metropolitan Fire Brigade Act, 1865; in urban districts and in rural districts where urban powers have been acquired, by the Public Health Act, 1875, s. 171 (2), which incorporates the sections (32 & 33) of the Town Police Clauses Act, 1847, applying to the subject; and in other rural districts, under the Lighting and Watching Act, 1833, s. 44, if that Act has been adopted, or, where that Act has not been adopted, under the Poor Law Amendment Act, 1867, s. 29. Under the Parish Fire Engines Act, 1898, a parish council may arrange to have fires in their parish dealt with by the fire brigade of a neighbouring borough or district.

Fire, False Alarm of. The offence of giving a false alarm of fire is punishable summarily, in London under the London County Council (General Powers) Act, 1893 (56 & 57 Vict. c. ccxxi.), s. 16, and elsewhere under the False Alarms of Fire Act, 1895.

Fire Insurance. See ASSURANCE; INSURANCE; INTEREST; POLICY OF ASSURANCE.

Fireworks. As to the manufacture, sale, etc., of fireworks, see the Explosives Act, 1875, and the Orders in Council, and of the Secretary of State, made thereunder. Under ss. 80, 91, of the Act, any person who throws, casts, or fires any firework in or into any highway, street, thoroughfare, or public place is liable, on summary conviction, to a penalty not exceeding £5.

Firken. A quarter-barrel; contains nine gallons. It is not known to the law.

Firm denotes (1) the style or title under which one or several persons carry on business; and (2) the partnership itself, that is, the individual members forming the partnership. The mercantile notion of a firm is that it is a body distinct from the members composing it, and having rights and obligations distinct from those of its members; in other words, a firm is by laymen considered as a kind of corporation. Although this is not the legal status of a firm, yet in the following respects its *quasi*-corporate nature is recognised.

In procedure, an action may be brought by or against a firm in the name of the firm (Ord. 48*a*, r. 1), and when a firm is so sued the writ may be served either upon one or more of the partners or at its place of business on the manager of the business (*ib.*, rr. 3, 4); provision is also made for issuing execution against the members of the firm, and also against any property of the firm within the jurisdiction (*ib.*, r. 8).

Any individual trading under a name or style other than his own name may be sued under such name or style as if it were a firm name (*ib.*, r. 11), but he must sue in his own name unless he be a moneylender, in which case he must sue both in his registered name, because the Moneylenders Act, 1900, s. 2, requires him so to do, and also in his own name, because the R.S.C. do not authorise him to sue only in his registered name.

In bankruptcy, where a firm becomes bankrupt, the assets of the firm (called the joint estate), and the assets of each individual partner (called the separate estate), are administered separately. (See JOINT.) Again, when several persons form a firm, and one or more of them (not being all) form another firm, the former is called the major, and the latter the minor, firm. The distinction is of importance, because where one of such firms becomes bankrupt any member of the other may prove against it notwithstanding the general rule that a partner cannot prove against the joint estate in competition with the joint creditors; and where both become bankrupt a creditor of the two firms may prove against each (Bankruptcy Act, 1914, s. 32, Sch. II., r. 19). See PARTNER.

Firma. Anciently this meant either victuals or rent. *Firma noctis* before and immediately after the Conquest meant a liability to provide one night's entertainment for the king. *Firma burgi* meant the right to receive the tolls, rents, or other profits of a burgh or borough; it was granted to the local authority by the king or other lord of the borough upon payment of a fixed sum.

See *Alba firma; Feodi-firma.*

The word was also used as meaning a farm (q.v.), and in the phrase *ad firmam tradidi* (I have to farm let): see FARM LET.

Firmior et potentior est operatio legis quàm dispositio hominis (*Co. Litt.* 102). (The operation of the law is firmer and more powerful than the will of man.) In general, no man's legal position is varied by any agreement between third parties. Thus the right of taking by survivorship in joint tenancy remains unaffected by either joint tenant devising his undivided share: the title of the survivor is sometimes known as the elder title.

Compare FORTIOR ET POTENTIOR, etc.

First Fruits. See ANNATES; RECEIVER, ETC.

First Fruits and Tenths, Court of. Under the statute 32 Hen. 8, c. 45, this Court was constituted for the collection of the first fruits or annates (q.v.) and tenths (q.v.). It consisted of a chancellor, a treasurer and a king's attorney, all of whom were described as being "of the first fruits and tenths." The Court was abolished by the statute 1 Mar., sess. 2, c. 10. The Governors of Queen Anne's Bounty (see QUEEN ANNE'S BOUNTY) now perform, under statutory powers, the functions formerly vested in this Court.

First Impression. A case which presents to a Court of law for its decision a question of law which is new, and for which there is consequently no precedent, is said to be a case of first impression.

First Offenders. Up to 1861 there was no statutory provision relating especially to persons convicted for the first time. Before that time it had been customary to discharge upon recognizance, to come up for judgment when called on, persons convicted of minor felonies or of misdemeanours, if the Court, whether of assize or quarter sessions, considered such a course advisable in view, amongst other things, of the fact that the prisoner had not been previously convicted; and this course is still followed in the case of conviction on indictment. Under the Larceny Act, 1861, s. 108, and the Malicious Damage Act, 1861, s. 66, there is power to adopt a like course in respect of a first summary conviction for larceny or malicious damage. The now repealed Probation of First Offenders Act, 1887, provided, or purported to provide, Courts with further powers which might be exercised in the case of persons convicted of larceny, false pretences, or misdemeanour punishable with not more than two years' imprisonment, against whom no previous conviction was proved. Now the fact that any summary conviction, or any conviction on indictment for any offence punishable with imprisonment, is for a first offence, is one of the grounds upon which Courts can exercise the powers given to them by the Probation of Offenders Act, 1907, as to which see PROBATION OF OFFENDERS.

Fishery. A fishery or piscary "is a liberty of fishing in another man's waters, or his own," according to the *Termes de la Ley*.

Fisheries are either royal, public or private.

I. A royal fishery is the exclusive right of the Crown of fishing in a public river. Such a right cannot be created *de novo* since Magna Charta. If it has been granted to a subject, it is called a free fishery (*infra*).

II. A public or common fishery (or public common of fishery) is the right of the public to fish in the sea and in public navigable rivers as far as the tide flows. This right cannot exist if the water is subject to an exclusive right of fishery in any person or corporation.

III. Private fisheries are of three kinds.

(i.) A several fishery or piscary (sometimes called simply a fishery or piscary) is an exclusive right of fishing in a particular water, and vested either in the owner of the soil or in someone claiming under him. Hence if a man grants a several fishery in water belonging to him, the grantee may exclude him from fishing there. And a several fishery may be confined to a particular kind of fish. It may sometimes shift if the bed of the river shifts. (See DERELICTION.) A several fishery in public waters which excludes the public from fishing there, may be either in the Crown, in which case it is also called a royal fishery (*supra*), or in a private person or body claiming under the Crown: but it cannot have been created since Magna Charta. The owner of a several fishery has a privileged property in the fish before they are caught. See PROPERTY.

(ii.) Common of piscary or fishery is the right of fishing in another man's waters, such as a pond or private river, but in common with, that is, not in exclusion of, the owner of the soil. Common of piscary is a profit *à prendre*, and may be either appurtenant or in gross, but apparently not appendant. The term seems to be confined to that right of fishing which the tenants of manorial land have of fishing in the waters of the lord (*infra*).

(iii.) The true nature of a free fishery is a disputed point. According to Coke, it is much the same (at all events in the right which it confers) as a common of piscary, while Blackstone says that a free fishery is an exclusive right of fishing in a public river, and is a royal franchise. There is no doubt that the term is used in both senses. It may be suggested that "free fishery" originally meant merely

a liberty or right of fishing created by express grant from the owner of the soil or water. Consequently such a right, if granted by the Crown, would give the right of fishing in a public river to the exclusion of all private persons (though not necessarily to the exclusion of the Crown), while, if granted by the owner of a several fishery, it would give the right of fishing in his water to the exclusion of all persons except himself: in other words, it would create the right of fishing in common with him. The term "common of fishery," having been already appropriated to denote the right of the tenants of a manor to fish in the lord's waters in common with him (*supra*), the term "free fishery" would conveniently be used to denote any other right of fishing in common with the owner of the water; so that, according to this view, a free fishery and a common of fishery in private waters both confer the right of fishing in common with the owner of the soil, and only differ in their origin.

Fishery Laws. The Fishery Laws are a series of statutes passed for the regulation of fishing, especially to prevent the destruction of fish during the breeding season, and of small fish, spawn, etc., and the employment of improper modes of taking fish.

Fish-garth. A dam or weir in a river for taking fish. See the statute 23 Hen. 8, c. 18.

Fish Royal are whale and sturgeon, which, when either thrown ashore or caught near the coast, are the property of the Sovereign. It is said by the old writers, that in the case of a whale it is divisible between the king and the queen, the head being the king's and the tail the queen's. See PREROGATIVE.

Fitzherbert. Anthony Fitzherbert, the author of the *Grand Abridgment*, a species of digest of the law (see ABRIDGMENTS OF THE LAWS OF ENGLAND), and of the *New Natura Brevium*, was a serjeant-at-law, and afterwards a judge of the Common Pleas, during Henry VIII.'s reign. He also wrote a work on justices of the peace. See NATURA BREVIUM.

Five Mile Act. This was the popular title both of the statute 35 Eliz. c. 2, and of the statute 17 Car. 2, c. 2. The Act of Elizabeth forbade "popish recusants" who had been convicted of failing to attend the services of the Established Church to move more than five miles from their usual places of abode; and the statute of Charles, amongst other things, prohibited persons preaching in nonconformist places of worship, from being, except when on a journey, within five miles of any city, incorporated town or borough sending burgesses to Parliament.

Fixtures are personal chattels annexed to land, that is, fastened to or connected with it. The general rule is that if the owner or occupier of land annexes anything to the freehold it becomes part of the freehold, so that the ownership of the chattel passes with the ownership of the freehold. Thus, if A sets up fixtures on his land, and then mortgages the land to B, and afterwards becomes bankrupt, the fixtures pass with the freehold to B, although all the other chattels belonging to A (not comprised in a registered bill of sale) pass to his trustee in bankruptcy. For the same reason no fixture can be taken in distress for rent.

If the rule that fixtures form part of the freehold were invariable, it would have the effect of entitling every heir, devisee and reversioner of land to the fixtures left on the land by the ancestor, testator or tenant for life, instead of their passing to his personal representatives with his other chattels: it would also entitle every freeholder to all the fixtures set up by his tenants; but it is relaxed in certain cases, especially as between landlord and tenant. Hence fixtures are divided into two classes; (1) landlord's fixtures, or those which belong to the landlord; and (2) tenant's fixtures, or those which belong to and may be removed by the tenant at any time during his tenancy. Tenant's fixture again are divisible according to their nature into (a) trade fixtures, being articles erected by the tenant solely for the purposes of trade or manufacture, such as engines, cisterns, plants and trees planted by nurserymen, etc., and (b) ornamental fixtures, or articles put up for domestic use or ornament, such as bookcases, marble chimney-pieces, etc.

Agricultural fixtures, or those erected by a tenant for agricultural purposes, are subject to special rules and statutory provisions, the general rule (in the absence of a special agreement) being that he is entitled to remove such fixtures, on giving notice to his landlord, unless the latter elects to purchase them. See in particular the Agricultural Holdings Act, 1908, s. 21. As to market gardens, see that title.

As between the next-of-kin and the heir of the owner of the fee, and also as between the next-of-kin of a tenant for life or in tail and the remainderman or reversioner, the general rule now is that trade fixtures as well as fixtures for ornament or domestic use pass

to the next-of-kin if they can be removed without damage to the land and are not essential to its enjoyment.

Fixtures are "personal chattels" within the meaning of the Bills of Sale Act, 1878, s. 4.

Flagrante delicto. An offender is said to be found or apprehended *flagrante delicto* (while the offence is flagrant) when found or apprehended in the act of committing the offence charged. The phrase is chiefly used in matrimonial cases with reference to adultery.

Fledwite; Flightwite. Anciently this meant a discharge from amerciaments where a person, having been a fugitive, came within the king's peace on payment of a fine or on pardon. It also seems to have meant a fine paid for the discharge.

Fleet Prison; Marriages and Registers. The Fleet Prison is believed to have dated from the Norman period. It seems never to have been used for prisoners sentenced to imprisonment for offences, the only persons confined there being prisoners for debt and those committed for contempt of court. It was abolished by the Queen's Prison Act, 1842, the prisoners in the prison being transferred to the Queen's Prison (q.v.).

Under the common law, neither banns, licence, nor clergymen were absolutely necessary for the validity of a marriage. One of the means by which persons might validly be married was mere consent of the parties in the presence of witnesses. Another valid means was a clandestine marriage by a person in priest's orders. The Fleet marriages were clandestinely performed, in defiance of ecclesiastical authority, by persons who were, or pretended to be, in priest's orders; and they were therefore valid either *qua* clandestine marriages celebrated by a priest, or *qua* matrimonial contracts in the presence of witnesses. They were celebrated by a class of disreputable persons living in or about the Fleet Prison, who cared nothing for ecclesiastical censures, in any room—frequently a tap-room—which they saw fit to use. The first on record took place in 1613. From 1674 to 1754 many thousands of these marriages took place. In 1753 the statute 26 Geo. 2, c. 33 (Lord Hardwicke's Act), was passed and made any such marriage impossible as from 25th March, 1754. See MARRIAGE.

The *Fleet Registers* consist of about three hundred large books, or registers, and about a thousand "pocket books" containing entries of marriages and baptisms celebrated in or about the Fleet Prison between 1674 and 1754. Up to 1821, when they were purchased by the Government, they were in private hands. After 1821 they were in the Registry of the Consistory Court of London, from which they passed to the Registrar-General under the Non-Parochial Registers Act, 1840, s. 6. These registers are not admissible in evidence for any purpose whatsoever.

The Fleet, as it was immediately before its abolition, is described in *The Pickwick Papers*. As to Fleet marriages, see Burn (2nd ed.), *History of Fleet Marriages;* and, for a popular description, see Sir Walter Besant, *The Chaplain of the Fleet*. See BASTON.

Flem. Anciently this meant a fugitive bondman or an outlaw.

Flemene frit; Flemenes frinthe; Flymena frynthe. Before, and for some time after, the Conquest this meant receiving or harbouring fugitives or outlaws.

Flemeswite. Fleta (q.v.) states that this meant *habere catalla fugitorum* (to have the cattle or the chattels of fugitives or outlaws.)

Fleta is the name given to a *Commentarius Juris Anglicani*, composed by an unknown writer during the reign of Edward I. The title is derived from the book having been written during the author's confinement in the Fleet Prison. He appears to have obtained his materials from Bracton and Glanville (q.v.).

Floating. See SECURITY.

Floor. The floor of a Court is that part between the judge's bench and the front row of counsel. Litigants appearing in person, in the High Court or Court of Appeal, are supposed to address the Court from the floor.

Florin. See GOLD COINS; SILVER COINS.

Flotsam. See JETSAM.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est. (Navigable rivers and ports are public; therefore the right of fishing there is common to all.) But this is true only as regards navigable tidal waters, and even then it may be excluded by some exclusive right of fishery.

"Fly for it." The question "Did he fly for it?" was anciently put to a jury in order to enable them to find whether one charged with treason or felony had fled in order to avoid justice. See FUGAM FECIT.

Flymena-ferm. In Anglo-Saxon and early post-Conquest law this meant the harbouring of outlaws.

F.O.B. These letters, which mean free on board, indicate, when used in a contract relating to the sale of goods intended to be sent by sea, that the seller is bound to deliver the

goods on board ship free of cost to the buyer.

Focage; Focagium. The same as firebote (q.v.).

Focale. Firewood.

Fodertorium. Food or fodder provided for the king's use in Anglo-Saxon times. Compare the later purveyance.

Fœmina viro co-operta. A *feme covert* (q.v.).

Fœnus nauticum. In Roman law this meant the interest charged for money secured by what corresponded to our bottomry (q.v.) bond.

Foiterers. The same as faitours (q.v.).

Folcland; Folkland. This, in late Anglo-Saxon times, meant land held of the king without written title under customary law (see BOCLAND; LAEN-LAND). The tenure corresponded more or less to that of the post-Conquest copyhold land.

Folcmote; Folkmoot. In Anglo-Saxon times this meant any assembly of the people, other than the *witenagemot* (q.v.), for either judicial or legislative purposes. It included, for instance, the shire mote or shire court, and the court of the hundred.

Folcright; Folkright. The laws of England as they existed in later Anglo-Saxon times. They were the basis of the common law (q.v.).

Foldage is a privilege possessed in some places by the lord of a manor, and consists in the right of having his tenants' sheep to feed on his fields, so as to manure the land, in return for which the lord provides a fold for the sheep. It is a seignorial right (q.v.).

The name of foldage is also given in parts of Norfolk to the customary fee paid to the lord for exemption at certain times from this duty. Compare FALDFEE.

Foldcourse means (i) in its proper sense, the right which the lords of some manors have of feeding a certain number of sheep on the lands of their tenants during certain times of the year. It seems that such a right is not strictly a right of common, although frequently so called, but a seignorial right reserved by the lord of the manor over his tenants' lands.

"Foldcourse" also means (ii) land subject to a right of foldcourse, or the same thing as a sheepwalk (q.v.); and (iii) the right of a tenant of a manor to pasture sheep on the land of the lord; such a right is a common appurtenant.

See FOLDAGE; COMMON.

Folgarii; Folger; Folgere. In the time of Bracton *folgarii* meant household servants. The other two forms of the word seem to have had the same meaning at a later period.

Folio. In the law, a folio means so much of a document as contains seventy-two words, except where the term is used with regard to wills or office copies, in which case it means so much of the will or copy as contains ninety words.

Food. "For the purposes of the Sale of Food and Drugs Acts the expression 'food' shall include every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and shall also include flavouring matters and condiments" (Sale of Food and Drugs Act, 1899, s. 26).

Foot. This was the same as the chirograph (q.v.) or record of the levying of a fine (q.v.).

The foot, as a measure of length, is one-third of the imperial standard yard (Weights and Measures Act, 1878, s. 11). See YARD.

Football. See BETTING.

Footgeld. In the forest laws this was an amerciament for failing to expeditate (q.v.) dogs. To be free of footgeld meant to be under no obligation to expeditate.

Footpath; Footway. A footpath or footway may be either public or private. If public, it is open to all the King's subjects, but only when on foot. A road which is a horseway or carriageway for only the occupiers of certain tenements or the inhabitants of a parish, may be a public footway. A private footway is one which can be used only by the occupiers of certain tenements or by the inhabitants of a parish.

Public footways may be created either by dedication (q.v.) or by statute.

The Local Government Act, 1894, s. 13 (2), empowers the parish council or parish meeting to spend money on public footways other than those at the side of a public road. S. 13 (2) makes the consent of the parish council and of the rural district council necessary for the stopping or diversion of any footway; and under s. 26 the district council, whether urban or rural, or in the event of their default, the county council, may prevent the obstruction of any footway, either by removing, or suing for the abatement of, or indicting for, the obstruction. It is to be noted that these provisions do not abrogate the right of any individual to abate or to take proceedings in respect of an obstruction.

The Public Health Act, 1875, s. 144,

enables every urban authority to take such action for the purpose of stopping or diverting a public footway as, under ss. 84-92 of the Highway Act, 1835, might have been taken by the inhabitants, in vestry assembled, of any parish within the urban district; and it also vests in every urban authority all the powers, under the Act of 1835, of the surveyor of highways, which, of course, includes public footways.

As to the power of local authorities to repair damage caused by excavations on land adjoining the footways of streets, see the Public Health Acts Amendment Act, 1907, s. 20.

Foragium. Straw from which the corn had been thrashed.

Forbalk. This seems to have been a strip of land lying next the highway.

Forbatudus. Anciently this meant one killed by another in self-defence.

Forbearance. See CONSIDERATION.

Force (Vis). This generally meant such violence as was unlawful. It was necessarily implied in every trespass (q.v.), rescue (q.v.) or disseisin (q.v.). See FRESH FORCE.

Force and Arms, With. These words (originally *vi et armis*), with the addition of the words "against the peace" (*contra pacem* originally), were a necessary part of every count for misdemeanour or civil trespass respectively until the Criminal Procedure Act, 1851, s. 24, made them unnecessary in any indictment, and the Common Law Procedure Act, 1852, s. 49, made them unnecessary in any pleading in a civil proceeding.

Forcheapum. Anciently this meant forestalling (q.v.).

Forcible Detainer is the offence committed by a person who, having wrongfully entered upon any lands or tenements, detains them with violence or threats, that is, in the same manner as would render an entry upon them for the purpose of taking possession a forcible entry (q.v.). It is a misdemeanour. See the statutes 8 Hen. 6, c. 9, and 21 Jac. 1, c. 15.

Forcible Entry is the offence of entering upon any land or tenements in a violent manner in order to take possession thereof, whether the violence consists in actual force applied to any other person, or in threats, or in breaking open any house, or in collecting together an unusual number of persons for the purpose of making such entry.

Forcible entry is a misdemeanour. At common law it had been permitted in certain cases, as, for instance, where the rightful owner had been wrongfully disseised or put out of possession, but it was altogether prohibited by the statute 5 Rich. 2, st. 1, c. 7. Other Acts relating to it are the statutes 15 Rich. 2, c. 2, 8 Hen. 6, c. 9, 31 Eliz. c. 11, and 21 Jac. 1, c. 15.

The offence would not appear to be committed where the rightful owner enters in order to obtain possession from a person who is the mere custodian or bailiff of the owner, or who is a mere trespasser.

See FRESH DISSEISIN.

Foreclose; Foreclosure. When a mortgagor has failed to pay off the mortgage debt within the proper time, the mortgagee is entitled to bring an action in the Chancery Division of the High Court asking that a day may be fixed on which the mortgagor is to pay off the debt, and that in default of payment on that day he (the mortgagor) may be foreclosed of his equity of redemption, that is, deprived or debarred of his right to redeem. The judgment fixes a place (usually a room in the Royal Courts of Justice) for payment at the expiration of six months from the date of the judgment, and orders that the mortgagor be foreclosed if the debt is not paid on that day. Upon an affidavit of non-payment at the appointed time and place, the order for foreclosure contained in the original judgment will be made absolute by an order which is obtained, as of course, upon motion or summons. The effect of the foreclosure is to bar the mortgagor's right or equity of redemption, and thus to vest the property absolutely in the mortgagee; and he cannot subsequently sue the mortgagor for any deficiency of value, unless he gives the mortgagor a new right of redemption; but even after an order of foreclosure absolute the Court has a discretion to re-open the foreclosure within a reasonable time and to allow the mortgagor to redeem. Foreclosure actions are now comparatively rare in practice, as the mortgagee's remedy by sale, under the power of sale conferred upon him either by the mortgage deed or by the Conveyancing, etc., Act, 1881, s. 19, is in general more speedy and convenient. As to the derivation of the word, compare *Forjudge*. See DAY TO SHOW CAUSE; JUDGMENT; MORTGAGE; POWER.

Foregift. Used in the Ecclesiastical Leasing Act, 1842, s. 30, as a synonym for a fine or premium for a lease.

Foregoers. The king's purveyors were anciently known by this name. See the statute 30 Edw. 3, c. 5. See PURVEYANCE.

Foreign, in law, is that which is out of a certain State, country, county, liberty, manor, jurisdiction, etc. Thus in the law of divorce

"foreign" means anywhere out of England, and "foreigner" means one who is not a domiciled Englishman. As to foreign law, see FACT. As to foreign judgments, see JUDGMENT. As to foreign services, see SERVICE. As to foreign bills of exchange, see BILL OF EXCHANGE. See also FOREIGN ATTACHMENT; FORFEITURE; STATE.

In the early law-writers *forinsecus* is the law Latin form of *foreign*. The word is derived from the Latin *foras* (outside of); and it must be recollected that, although in the modern sense foreign means outside the United Kingdom or the British Empire, the word anciently was used much more frequently as meaning outside some particular part of the realm, as, for instance, the City of London. See FOREIGN ATTACHMENT; FOREIGN BOUGHT AND FOREIGN SOLD.

Foreign Adjustment. See ADJUSTMENT; F.G.A.

Foreign Attachment. By the custom of the City of London (and also of Bristol, Exeter, and Lancaster), if an action of debt was brought in the Mayor's Court, and the defendant made default in appearing to the action, and it appeared that he had nothing within the city whereby he might be summoned, the Court might, on the plaintiff alleging that some person within the city had property belonging to the defendant in his possession, attach such property to compel the defendant to appear. The attachment was effected by warning the person in whose possession the property was not to part with it without the further order of the Court. This person was then called the garnishee. If the defendant still made default in appearing, the garnishee was required to show cause why the plaintiff should not have execution of the property attached, and in default of cause being shown, the plaintiff obtained execution, first giving security to restore the property to the defendant if he should within a year and a day come into Court and disprove the debt alleged in the action. (See PLEDGES TO RESTORE; SCIRE FACIAS.) What the plaintiff received by the execution operated as a satisfaction (wholly or *pro tanto*) of the debt due to him from the defendant.

Where the property attached was money belonging to the defendant, the judgment was final, but in the case of goods the judgment was interlocutory, and was called judgment of appraisement, because it directed the goods to be appraised (*i.e.*, valued) by the serjeant-at-mace, in order that the defendant might be credited with their value, and when this was done final judgment was signed and execution issued.

Theoretically, the primary object of the process of foreign attachment was to compel the defendant to appear, and therefore if the defendant appeared according to the custom, as by giving bail, paying money into Court, etc. (see APPEARANCE), the attachment was dissolved or at an end. In practice, however, the proceeding by foreign attachment was used principally for the purpose of taking the defendant's property in satisfaction of the debt. Hence it had become usual to make the record in a proceeding by foreign attachment recite a number of steps which were purely fictitious, *e.g.*, a return by the sheriff that the defendant had nothing within the city whereby he might be summoned, a "solemn calling" of the defendant, his default, etc., etc.: all this was recited in the record as occurring at one and the same Court: no specific time was necessary to elapse, but as soon as the action was entered and the plaintiff made a satisfactory affidavit of his debt, he was at liberty to issue the attachment, which was a command of the Court to the sheriff to attach the property; the sheriff accordingly served on the garnishee an "attachment paper" or notice not to part with the property; after the fictitious "solemn calling" of the defendant and his four successive defaults (for, as the proceedings to obtain execution were founded on the defendant's supposed default in appearing, it was necessary to allege his default, although it had not actually taken place), a *scire facias* was issued to warn the garnishee to appear and show cause why the plaintiff should not have execution of the property attached, and if no cause was shown, or if cause was shown but judgment was given for the plaintiff, he obtained execution of the property.

In the City of London foreign attachment had been used from time immemorial, and had been applied systematically to cases in which neither the debt sued for nor the debt due by the garnishee had accrued due within the City and in which no single one of the three parties was either a citizen or a resident in the city; all that was necessary was that the garnishee should be within the City when the attachment paper was served on him. And bodies corporate had frequently been made garnishees. But in 1867 it was decided (1) that foreign attachment did not lie unless either the original debt or the debt which it was proposed to attach had accrued due within the City or unless some one or other of the

parties was a citizen or a resident in the City, and (2) that the garnishee was entitled to apply for a writ of prohibition in order to test the legality of any particular attachment without first pleading in the Mayor's Court. In 1881 it was decided (1) that a body corporate could not be made a garnishee, and (2) that all the various steps which it had been customary to recite must actually be taken instead of being purely fictitious. These decisions put an end to the use of foreign attachment. See MAYOR'S COURT; BILL OF PROOF.

Foreign Bought and Foreign Sold. This was a custom existing in the City of London which prevented "foreigners" from buying and selling cattle in Smithfield Market. The statute 22 & 23 Car. 2, c. 19, s. 12, provided that as from 24th June, 1671, it should be lawful for "foreigners" as well as freemen to buy and sell in that market. Here, of course, foreigner meant anyone other than a freeman of the City. See FOREIGN.

Foreign Company. There is no statutory definition of this expression, which, however, has long borne in the law the meaning of any company constituted elsewhere than in the United Kingdom. Every such company, if it establishes a place of business within the United Kingdom, must comply with the provisions of ss. 274, 275 of the Companies (Consolidation) Act, 1908.

Foreign Enlistment Act, 1870. This Act makes it an offence, punishable with fine and imprisonment, for any British subject, without the licence of the Crown, to accept a commission or any employment in the military or naval service of any foreign State at war with any other foreign State which is at peace with England, or to build or equip any ship for the service of any such State, or to assist in increasing her armament or warlike force. Until the enactment of the statute 59 Geo. 3, c. 69 (which was repealed and replaced by the Act of 1870) none of these things were illegal.

The Act of 1870 has been supplemented by the Treaty of Washington, 1922, which (ss. 2, 3) makes it an offence at any time to build or send out of the ports of His Majesty's Dominions to which the statute applies, any ship of war without the licence of the Admiralty. The Act is (s. 6) to come into operation on such date as may be fixed by Order in Council, and (s. 5) extends, speaking generally, only to England, Scotland, and the Crown Colonies.

Foreign General Average. See F.G.A.

Foreign-going Ship. This expression "includes every ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say, the coasts of the United Kingdom, the Channel Islands, the Isle of Man, and the Continent of Europe between the river Elbe and Brest exclusive" (Merchant Shipping Act, 1894, s. 742), and fishing boats owned out of Canada and Newfoundland which are engaged in the Newfoundland cod fisheries, but not other fishing-boats (*ib.*, s. 744). Such ships are subject to many sections of the Act which do not apply to home-trade ships (q.v.).

Foreign Jurisdiction. This means such jurisdiction as a State has with regard to its subjects when they are, or with regard to acts done, outside its boundaries. As to acts done outside British territory, see ABROAD, OFFENCES COMMITTED. As to jurisdiction exerciseable abroad, the earliest instance was that exercised through the Levant Company (q.v.). There were various consular jurisdictions—that is to say, jurisdictions exercised through our consuls—in the Ottoman Empire and in China; but the events of recent years have produced so much unsettlement in those countries that little of a definite nature can be said about them at present.

The Act now regulating the subject is the Foreign Jurisdiction Act, 1890. That Act repealed and replaced a series of enactments (all specified in the Third Schedule) commencing with the Foreign Jurisdiction Act, 1843, and ending with the Foreign Jurisdiction Act, 1878. The preamble to the Act of 1890 is as follows: "Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty has jurisdiction within divers foreign countries. . . ; and it is expedient to consolidate the Acts relating to the exercise of Her Majesty's jurisdiction out of Her dominions." It accordingly proceeded to enact a series of provisions, which, along with various Orders in Council made pursuant to it, now form a complete code. As to the Orders, see the Index to S. R. O., under *Foreign Jurisdiction*. See CAPITULATION; CONSUL.

Foreign Marriages. See MARRIAGE ACTS; MARRIAGE OFFICER.

Foreign Office. The Government Department of which the minister known as the Secretary of State for Foreign Affairs is the head. See SECRETARY OF STATE.

Foreign Opposer or **Apposer; Forinsecarum Appositor.** This was an officer of the Ex-

chequer who audited the accounts of the sheriffs. The office was abolished in 1833. Jacob (1739) says "The Foreign Opposer . . . opposes or makes a charge on all Sheriffs, etc., of their Green Wax, *i.e.*, Fines, Issues, Amerciaments, Recognizances, etc., certified in Estreats attached to the Writ, under the Seal in Green Wax, and delivereth the same to the Clerk of the Estreats to be put in Process." From the Commons Committees Report (1803), Vol. 13, p. 315, it appears that in 1798 the duties were much as described by Jacob, and that the office, after payment of a deputy and other expenses, was worth about £210 a year to the holder—who did nothing except draw that amount annually.

Foreign Plea. Anciently this meant a plea (q.v.) to the jurisdiction of the Court.

Foreign Security. The present statutory definition of this expression is to be found in the Stamp Act, 1891, s. 82.

Forejudge; Forjudger. See FORJUDGE.

Foreman. The member of a jury who acts as spokesman of that body. On grand juries the foreman is selected by the members of the jury. On other juries the juror who first enters the box generally acts as foreman.

Forensic Medicine, or medical jurisprudence, as it is also called, is, as Taylor puts it, "that science which teaches the application of every branch of medical knowledge to the purposes of the law: hence its limits are, on the one hand, the requirements of the law, and, on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry, physics and botany, lend their aid as necessity arises; and in some cases all these branches of science are required to enable a Court of law to arrive at a proper conclusion on a contested question affecting life or property."

Forensic medicine is occasionally required in cases of a civil nature, such as questions of lunacy or unsoundness of mind (see LUNACY; DELUSIONS), or cases of nuisances injurious to health. Its most important function, however, is in criminal trials, where the evidence of a medical expert is frequently required. Thus, in a trial for murder, where the evidence is circumstantial, it is almost invariably necessary to adduce evidence by a medical practitioner as to the appearance of the body and the results of a *post-mortem* examination. So far as he attempts to account for the symptoms or appearances observed by him, his evidence is merely opinion evidence.

"Medical jurisprudence" is a synonymous term. So also is "legal medicine."

Foreschoke. Anciently lands which the lord had seised into his hands because of the tenant's failure to perform service, and which the lord then held for a year and a day without any steps for their recovery being taken by the tenant, were said to be *foreschoke* or abandoned.

Foreshore is that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides, that is, by the medium line between the greatest and least range of tide (spring tides and neap tides); and this is popularly described as the land between high and low water marks. It is to be found in arms of the sea, such as the Thames above Kingston, and the Severn above Tewkesbury, where the height of the water varies with the tide, even though the water be fresh. It forms part of the adjoining county, the justices of which have cognizances of offences committed there, whether it is or is not at the time covered with water. It also forms part of the adjoining parish.

The property in the foreshore is *primâ facie* vested in the Crown, but a part of it may belong to a subject by an ancient grant from the Crown, or by prescription. This ownership of the Crown is for the benefit of the community, and cannot be used in any way so as to derogate from or interefere with the public rights of navigation and fishery.

See ALLUVION; DERELICTION; NIHIL PRAESCRIBITUR, ETC.

Forest, in the legal sense of the word, is the exclusive right of keeping and hunting wild beasts and fowls of forest, chase, park, and warren, in a certain territory of "wooddy grounds and fruitfull pastures," with laws and officers of its own, established for the protection of the game. These laws are now obsolete.

A royal forest is one belonging to the Crown (see DEMESNE): a forest in the hands of a subject is a franchise (q.v.).

Most of the royal forests had been disafforested by the commencement of the nineteenth century. Eyres (see ATTACHMENT OF THE FOREST) had before then ceased to be held. The statute 57 Geo. 3, c. 61, after reciting, in effect, that the Warden Chief Justice and Justice in Eyre of the Forests north of the Trent and the like officers of the Forests south of that river had little to do and large emoluments, abolished all their offices (which were the last remnant of the forest-law machinery) as from the occurrence of the next vacancies,

and vested their functions in the First Commissioner of Woods and Forests.

Forests, chases, parks, and warrens have this peculiarity, that they give their owners a qualified property or ownership in the animals confined in them, so that no other person can acquire a property in them either by taking them within the forest, etc., or by chasing them thence and taking them in other ground.

See CARTA DE FORESTA; CHASE; PARK; WARREN; GAME; PURLIEU; ANIMALS FERÆ NATURÆ.

Forestall; Forestalment. To forestall a person is to obstruct his way with force and arms. To prevent a person from going on land to demand or distrain for rent in arrear by forestalling him operated as a disseisin of the rent. (See DISSEISIN.) The term is now obsolete.

It was also used to signify the offence of raising the price of certain goods, by buying merchandise on its way to market, or dissuading persons from bringing their goods there, etc. See ENGROSSING.

Forestry. The Forestry Act, 1919, is "an Act for establishing a Forestry Commission for the United Kingdom and promoting afforestation and the production and supply of timber therein and for purposes connected therewith." Reference should be made to the Act for information as to its provisions. The Commission has been duly established: its expenditure during the financial year 1921-22 was about £400,000.

The Act of 1919 has been amended on a minor point by the Forestry Act, 1921.

See RABBITS.

Forfang; forfeng. Anciently this meant the taking of provisions from fairs or markets before the king's purveyors had obtained what they required.

Forfeiture is where a person loses some property, right, privilege or benefit in consequence of having done or omitted to do a certain act.

Thus where a lease contains a provision enabling the lessor to put an end to the term if the lessee fails to pay the rent, or comply with the covenants, then if the lessee fails to pay his rent or repair, and the lessor puts an end to the term by re-entry, a forfeiture of the lease is said to take place.

In some cases the Courts before 1882 would relieve against a forfeiture, that is, prevent the person entitled to take advantage of it from doing so, the general rule being that the Court would relieve against a forfeiture when its object was to secure the performance of some collateral act, such as the payment of money, and when the Court could give by way of compensation all that was expected or desired. Thus the Court would relieve against the forfeiture of a lease for non-payment of rent, on the lessee paying what was due. The powers of the Court in this respect had been extended by statute to the case of forfeiture for breach of a covenant to insure against fire.

Now the Conveyancing, etc., Act, 1881, provides (s. 14), that a forfeiture for a breach of any covenant or condition in a lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the breach complained of and requiring him to remedy or make compensation for the same, and the lessee fails to comply with the notice within a reasonable time. Where a lessor proceeds to enforce a forfeiture the lessee may apply to the Court for relief, and the Court may grant or refuse relief as it thinks fit. This provision does not affect the law relating to forfeiture for non-payment of rent, and it does not extend to certain covenants and conditions (*e.g.*, those against assigning, underletting, etc., or providing for forfeiture on the lessee's bankruptcy and the like), but, with these exceptions, it applies, notwithstanding any stipulation by the parties to the contrary. The Conveyancing, etc., Act, 1892, s. 4, now gives the Court power also to relieve underlessees on forfeiture of superior leases. See UNDERLEASE.

As regards copyholds, there is forfeiture absolute, the effect of which is to determine the tenancy, and forfeiture optional—otherwise known as seizure *quousque*—the effect of which is merely to suspend the tenancy until the grounds for the forfeiture conditional have ceased. Thus where the copyholder purports to convey the freehold, there is a forfeiture absolute; whereas if he merely grants a lease contrary to the custom of the manor there is only a forfeiture optional.

The making of a false declaration as to qualification to own a British ship or any share therein makes such ship, etc., liable to forfeiture (Merchant Shipping Act, 1894, s. 67 (2)). A foreign ship assuming the character of a British ship, except for the purpose of escaping capture in war, or, if a warship, in the exercise of a belligerent right, is also liable to forfeiture (*ib.*, s. 69).

If the master or owner of a British ship conceals the British character of the ship, or assumes a foreign character with intent to deceive any person entitled to inquire into the matter, the ship is subject to forfeiture (*ib.*, s. 71).

Formerly forfeiture was a result of many

acts by tenants or owners of estates on the ground of their being considered by the feudal law as contrary to the duties of the tenants towards their lords. Thus a feoffment of land by a tenant for life was a forfeiture of his estate, because it was an attempt to dispose of the reversion; but this operation of a feoffment was abolished in 1845. See FEOFFMENT.

In criminal law, forfeiture is obsolete. If a person solemnizes or assists at the marriage of any descendant of King George II., in contravention of the Royal Marriages Act, 1772, it would appear that his lands and goods are forfeited to the Crown; but this part of the possible punishment is not likely to be enforced. If a person is outlawed for treason, his lands are forfeited to the Crown; if a person is outlawed for felony, he forfeits to the Crown all his goods and chattels, real and personal, and also the profits of his freeholds during his life; after his death the King is further entitled to his freeholds for a year and a day, with the right of committing in them any waste he pleases (called the King's year, day, and waste); but no one has been outlawed for nearly a century. Formerly conviction for any kind of felony caused a forfeiture of goods and chattels, both real and personal, but this has been abolished. See ATTAINDER; ESCHEAT; FELONY; ADMINISTRATOR.

Sentence of death, of penal servitude, of imprisonment with hard labour, or of imprisonment exceeding twelve months, for treason or felony causes forfeiture of all public office, pension, etc., unless there be a free pardon within two months of conviction, or before the office is filled (Forfeiture Act, 1870, s. 2).

Forfeiture of Marriage. A writ (abolished in 1660 with the Court of Wards and Liveries) of which Fitzherbert (N.N.B. 141) says: "If the heir be in the lord's custody and doth marry himself within age, without the assent of the lord, and when he cometh of full age, he entreth upon the lord and puts him out of the land, then the lord shall have a writ of Forfeiture of Marriage against him for the double value of the marriage." The writ was also known as *Forisfactura Maritagii*.

Compare VALUE OF MARRIAGE.

Forgabulum; Forgavel. A quit rent; a small rent reserved in money.

Forged Transfers Acts, 1891 and 1892. These Acts enable companies, friendly and similar societies, local authorities, and colonial Governments to make compensation in cash to the holder of any of their stocks, shares and securities which have passed to him by way of a forged transfer, and to which he has no title as against the rightful owner. The Acts apply only to companies, etc., which have adopted them.

Forgery. Down to the year 1914 there was no statutory definition of forgery, and recourse to the decisions of the Courts and to the common law was necessary in order to define it, while the statute law as to the offence was to be found mainly in the Forgery Acts, 1861 and 1870. But, in particular sections of no fewer than about seventy other Acts, various matters were specifically declared to be forgery or punishable as forgery. The Forgery Act, 1913, which came into operation on the 1st January, 1914, repealed every single one of those enactments, except ss. 3, 5, 6, 28, 34, 36, 37, 42, 43, 44, 47, 48, 49, 50, and 51 of the Act of 1861, and s. 4 of the Act of 1870. The whole law as to forgery, properly so called, including an elaborate definition of the offence, is now to be found in the Act of 1913 and in the unrepealed parts of the Acts of 1861 and 1870. This makes all the pre-existing learning on the subject entirely obsolete.

There are, however, many cases of forging or fabricating documents which are not forgery in point of law, as, for instance, the offence of forging a hawker's licence, which is dealt with in s. 4 (2) of the Hawkers Act, 1888. Such offences are really offences kindred to forgery. The special Acts relating to them are enumerated under the heading *Forgery and Kindred Offences*, in the *Index of the Statutes in Force*, which is published annually, as Vol. II. of the *Chronological Table and Index of the Statutes*, by H.M. Stationery Office.

Forinsecus. (From without; on the outside.) This word is found in the expression *forinsecum servitium*, which meant such service as was due to the superior of whom the lord himself held the land, while *intrinsecum servitium* meant such service as was due out of the land by a tenant who held of the lord. The *intrinsecum servitum* was "inside," and arose out of the bargain between the lord and the tenant: the *forinsecum servitium* was "outside," and existed independently of any such bargain. The word also occurs in the expression *forinsecum manerum*, which, where a manor lay partly within and partly without the liberties of a town, meant the part without the liberties.

Forisbannitus. Banished; as in the expression *forisbannitus ab Anglia*.

Forisfacere. To do something outside, that is to say, outside law or custom; also to forfeit or to exact a forfeit from.

Forisfactura. Forfeiture.

Forisfactura Maritagii, De. See FORFEITURE OF MARRIAGE.

Forisfactura pugnæ. The same as fightwite (q.v.).

Forisfamiliate. A son was said, in the time of Bracton, to be forisfamiliated when his father gave him seisin of part of his land and the son accepted it in full discharge of all claim to any other property of the father.

Forjudge; Forjudger; Forjudgment; Forjudicatum. To forjudge is to deprive a person of a thing or right by a judgment. Thus where, under the old law, a mesne lord was bound to acquit or indemnify his tenant paravail against services demanded of him by the lord paramount, and failed to do so, he was liable upon the writ of mesne (q.v.) to be forjudged or deprived of the services of the tenant paravail. (Norman French, *forjuger*, from *foris*, out, and *judicare*, to judge.) So also where an order was made depriving an attorney or officer of a Court of his right to appear therein the order was called a forjudger, forjudgment, or, anciently, *forjudicatum*.

Forler-land. This was land, forming part of the endowment of the see of Hereford, which anciently was leased only for the life of the Bishop of Hereford for the time being.

Form; Formality. See IRREGULAR; also ACTION ON THE CASE.

Forma juramenti illorum de consilio regis. (Form for the Oath of those of the King's Council.) Printed under these titles in the *Statutes of the Realm* (Vol. I., p. 248), amongst *Statutes of Uncertain Date*. It is not in the *Statutes at Large*. The oath now to be taken by members of the Privy Council is that prescribed by the Promissory Oaths Act, 1868, s. 2.

Forma legalis is **forma essentialis** (10 *Co.* 100). (Legal form is essential form) "and," continues Coke, "stands upon the substance of the thing to be done, and upon the sense of the statute." For the purposes of the construction of a statute there was a distinction between *forma verbalis*, which stood "upon the letters and syllables of the Act" and the *forma legalis*, which went to essentials.

Formalities. Formerly used as meaning the robes or insignia of an office or dignity. Selden uses it as meaning a component part of a coat of arms: the *London Gazette* of 1696 speaks of the members of a municipal corporation being "in their formalities," that is to say, in their robes.

Forma pauperis. See IN FORMÂ PAUPERIS.

Formedon. Writs of formedon (*de formâ donationis*) were brought by persons who claimed land under a gift (*donatio*) in tail when it was in the possession of a person not entitled to it. A formedon in the descender was brought by the issue in tail, a formedon in the remainder by a person entitled in remainder after the determination of the estate tail, and a formedon in the reverter by the reversioner or donor of the estate tail. They were all abolished by the Real Property Limitation Act, 1833, s. 36. See DISCONTINUANCE; HABERE FACIAS VISUM.

Formella, Formee. The translation of the ASSISA DE PONDERIBUS, ETC. (q.v.) in the *Statutes at Large* (Vol. I., p. 205) declares that "every formel containeth six stone except two pound, and every stone doth consist of twelve pound, and every pound consisteth of the weight of twenty-five shillings, whereby the sum in the formel is seventy pound."

Fornagium. The fee paid by a tenant to his lord for having his bread baked in the lord's oven, or for permission to use his own oven.

Fornication. This means voluntary sexual intercourse between two unmarried persons. In early times the Courts leet could inflict a fine, known as *leger-wite*, for fornication. This jurisdiction had fallen into disuse during the Middle Ages. In London and some other towns, under certain customary laws, there was some slight criminal jurisdiction with regard to fornication: but this also fell into disuse at an early period. During the period 1649-1660 fornication was for the first and last time made punishable by statute. Chapter 10 of the Acts of Parliament for 1650 made fornication punishable with three months' imprisonment. The often-repeated statement that a second offence was a capital felony under this Act is incorrect (see ADULTERY; INCEST). Now, fornication, unless it be incest, or with a girl under sixteen, or unless it be committed in a public place so as to involve indecency, or unless it involve the keeping of a disorderly house, is not a criminal offence.

The ecclesiastical Courts from the earliest times had jurisdiction as to fornication just as they had with regard to other forms of incontinence. The statute *Circumspecte agatis* (q.v.) expressly recognised this jurisdiction. Now an ecclesiastical Court can inflict the punishment known as penance (q.v.) for any form of incontinence (see CANONS OF 1603, No. 109). The jurisdiction is limited by the Ecclesiastical Suits Act, 1787, s. 2, which provides that any proceedings for incontinence must take place within eight months of the

offence, and shall be barred by the intermarriage of the parties. Ecclesiastical Courts have for many years ceased to deal with sexual offences by laymen. In the case of clergymen, fornication, like other forms of incontinence, can be and is dealt with under the Clergy Discipline Acts, 1840 and 1892.

See CONTUMACE CAPIENDO; CONTUMACY; EX TURPI CAUSA.

Forprise. Used in the statute 22 Hen. 8, c. 15, and other early statutes, as well as in legal documents, to mean an exception or reservation. In leases and conveyances the expression "excepted and forprised" was frequently found.

Forspeaker. Anciently this meant an advocate.

Forsteal. In Anglo-Saxon and early *post*-Conquest law this meant waylaying an enemy.

Fortescue. John Fortescue was Chief Justice of the King's Bench in the reign of Henry VI.; he died about 1476. He wrote the well-known treatise *De Laudibus Legum Angliæ*.

Fortior est custodia legis quam hominis (2 *Rol. Rep.* 325). (The custody of the law is stronger than that of man.)

Fortior et potentior est dispositio legis quam hominis (*Co. Litt.* 234). (The will of the law is more resolute and more powerful than that of man.) Coke cites this maxim in support of the proposition that "such condition as is intended by the law to be annexed to anything is as strong as if the condition were put in writing."

Compare FIRMIOR ET POTENTIOR, etc.

Fortiori, A. Used as meaning "much more" in some such expression as "If A. be necessary, then *a fortiori* is B. necessary."

Fortuna. Anciently this meant treasure-trove (q.v.).

Fortune Telling. Under the Witchcraft Act, 1735, c. 5, s. 4, fortune telling is an indictable offence. Prosecutions are never instituted now under that Act, as the Vagrancy Act, 1824, s. 4, provides that persons pretending to tell fortunes shall be punishable as rogues and vagabonds upon summary conviction. See VAGABOND.

Forty-days Court. The same as the Court of Attachment of the Forest (q.v.). Also known as *wood-mote*. It was held before the verderers at intervals of forty days to try all offences against the forest laws.

Forum. A place; the place in which a remedy at law can be sought; a Court. A matter is said to be *in foro conscientiæ* when it is one which must be decided according to the dictates of conscience. A *forum domesticum*, or domestic court, is one which decides matters relating to a body, such as an Inn of Court, which is not within the purview of the ordinary Courts. A *forum competens*, or *incompetens*, means a Court which has, or has not, jurisdiction to deal with a matter. The word is used in the Statute of Westminster II., c. 43, in the expression *forum regium*, the King's Court. The word is commonly found in some such phrase as "This is a matter for another *forum*," *i.e.*, "This is a matter for another Court."

Forwarding Agent; Forwarding Merchant. This is an agent who ships goods from England to merchants abroad on behalf of the owners of the goods. His rights and liabilities are governed by the principles which apply to other agents. See AGENT; PRINCIPAL.

Fossa. See FURCA ET FOSSA.

Fossatum. A ditch, as a defence of a walled town, or a ditch generally. *Fossatura* was another form. *Fossaturum opera* meant work done on the maintenance of ditches. *Fossagium* meant the levy made upon burgesses for maintaining the ditch round the town.

Foster-land. This, in Anglo-Saxon times and in the time of Domesday, meant land for the support of the monks of a monastery.

Fosterlean. This appears from Jacob to have meant, in Anglo-Saxon times, a provision for a wife corresponding to the later jointure.

Fother; Fodder. This literally meant a cartload. From that it came to mean about a ton. In the time of Jacob (1739) it was a customary weight for lead, but the weight varied in different places. Generally it meant 21 cwt. and 56 lbs.: but in London it meant only 19 cwt. and 56 lbs., while in the lead-mining districts it meant 22 cwt. and 56 lbs.

Foundation. The building and endowment of a college or hospital.

Foundling Hospital, The. The statute regulating the Foundling Hospital, London, is the 13 Geo. 2, c. 29, which confirmed and amplified the provisions of the royal charter by which the hospital had been incorporated in 1739.

Fourcher; Fourch; Furcare. To fork or divide an action; to delay an action. When A. and B. were sued jointly, neither was bound to answer until both had appeared. A. would come in on the essoin day, but B. would not, then the matter would be adjourned to enable B. to come in; B. would come in, but A. would not; then the matter would be again

adjourned to enable A. to come in. From the old text-books it does not clearly appear to what length this manœuvre could be carried. It was forbidden to joint tenants and co-parceners by the Statute of Westminster I., c. 42, and to other defendants by subsequent statutes. The *Termes de la Ley* (1602) speaks of it as being in common use. So does Jacob in 1739; but in 1787 Reeves speaks of *fourching* as a thing which had formerly been practised. The abolition of essoins (q.v.) and of the essoin day in 1830-1832 made the practice impossible.

Four-day Order. Order 41, r. 5 of the R. S. C., provides that every order or judgment requiring any person to do an act shall specify the time within which such act is to be done. If, however, the order, etc., does not specify the time, then the Court makes a supplemental order fixing the time, and this order, although not invariably giving four or only four days for compliance, is known in the Chancery Division as a "four-day order."

Four Seas. These meant (1) the Atlantic; (2) the North Sea; (3) the German Ocean; and (4) the English Channel.

Coke upon Littleton (1628) defines the expression *intra quatuor maria* (within the four seas) as meaning "within the Kingdom of England and the dominions of the same Kingdom," which makes it mean in England, Scotland, or Ireland, but not within such colonies or plantations as then existed. Compare ABSENCE BEYOND SEAS.

Fovea. (A pit.) Anciently it meant a vault or grave for the dead.

F.O.W. These letters, which stand for "first open water," are used in charter-parties for northern European ports which are frozen up in winter. They mean "immediately after the ice breaks up so as to make navigation possible."

Fowls, Domestic. The Poultry Act, 1911, is "an Act to enable Orders to be made under the Diseases of Animals Acts for protecting Live Poultry from Unnecessary Suffering" while in transit or for sale. Fowls are animals within the meaning of the Protection of Animals Act, 1911; see s. 15 (*a*). See ANIMALS, LIABILITY FOR; CRUELTY TO ANIMALS.

Fowls of Warren. These were such fowls as the grantee of a right of free warren (q.v.) could take and kill to the exclusion of all other persons. They certainly included pheasants and partridges. It is disputed whether woodcock, herons, mallards, quails, and rails were also included.

Fox. The fox is a wild animal in which there can be no property unless it is kept in confinement. (See ANIMALS FERÆ NATURÆ.) Fox hunting is a trespass unless it be carried on with licence from the owners or occupiers of land. The old common law theory that a fox, being a noxious wild animal, might, like an escaped tiger, be lawfully followed and destroyed anywhere is now quite untenable.

Fox's Libel Act. This is the popular title of the Libel Act, 1792, which was passed at the instance of Charles James Fox. It got rid of the common law doctrine that in a prosecution for libel it was for the judge to decide whether the document alleged to be a libel is or is not a libel, and it left that, like every other question, to the jury.

F.P.A. These letters stand for "free from particular average," and are used in connection with policies of marine insurance to denote that the underwriter is liable only for a total loss, whether actual or constructive. See AVERAGE.

Fractionem diei non recipit lex (*Lofft*, 572). (The law does not recognise any fraction of a day.) Compare DE MINIMIS.

Frampole Fences. These were fences on the Manor of Writtel, in Essex, for the repair of which the tenants had certain unusual rights of taking the lord's timber.

Franchilanus. A free tenant; a freeman.

Franchise, in its general sense, is a liberty or privilege.

I. At common law, a franchise is a royal privilege or branch of the Crown's prerogative, subsisting in the hands of a subject, either by grant or by prescription. Franchises are of two classes—(1) those which originally formed part of the Crown's prerogative, and could therefore be exercised by the King *jure coronæ* before they were granted to a subject: such as the franchises of waifs, estrays, wrecks, royal fish, forests, etc.; (2) those which can only be created by granting them to a subject: such as fairs, markets, tolls, parks, warrens, etc. (see the various titles). The distinction is so far of importance that when a franchise of the former class is appendant to a manor or the like, and they both come into the hands of the Crown, the appendancy is extinguished, because the franchise merges in the prerogative: while in the case of a franchise of the latter class the appendancy would be preserved. A franchise is an incorporeal hereditament (see HEREDITAMENT); it not only authorises something to be done, but gives the owner the right of preventing all other persons from interfering with its exercise: thus, the owner of a market, ferry or the like, can generally pre-

vent anyone from setting up a new market or ferry so near to his as to diminish his custom.

II. Franchise also means the locality subject to a franchise.

III. In ancient times, among other franchises usually granted by the Crown to a new borough on its incorporation, was the right of sending burgesses to Parliament; and hence franchise came to mean the right to elect members of parliament, whether in boroughs or counties.

See ELECTORAL FRANCHISE; PARLIAMENT.

Franchise Prisons. These were prisons in which debtors were confined under the authority of ancient grants from the Crown of the franchise or privilege of keeping the debtors in custody. Such a franchise was an estate of inheritance, descending to the heir of the grantee, or being held in right of succession by a corporation, if the grant had been to the corporation. In 1858 seven franchise prisons existed: (1) Swansea Debtors' Prison for the Liberty of Gower, which was in an old Norman castle belonging to the Duke of Beaufort; (2) Newark Liberty Prison for Debtors; (3) Halifax Home Gaol for the Manor of Wakefield; (4) Gaol for the Forest and Forest Liberty of Knaresborough, belonging to the Duchy of Lancaster; (5) Gaol for the Borough and Township of Knaresborough, belonging to the Duchy of Lancaster; (6) Sheffield Debtors' Gaol, for the Liberty of Hallamshire, and (7) Hexham Debtors' Prison. The grants under which they were carried on had all been made before Lord Coke wrote in the seventeenth century. They were all abolished by the statute 21 & 22 Vict. c. 22, which provided that the debtors then confined in them should be removed to county gaols on 1st August, 1858.

Franconia Case. The popular title of *R.* v. *Keyn* (1876), 2 Ex. D. 63. The question in the case was whether a foreign subject in command of a foreign ship could be convicted at the Central Criminal Court of the manslaughter of a person whose death resulted from the negligent navigation of the foreign ship within three miles of English territory. It was held that he could not (see HIGH SEAS).

Frankalmoign is the tenure by which the lands of the Church are for the most part held. "And," says Littleton, "such tenure beganne first in old time. When a man in old time was seised of certain lands or tenements in his demesne as of fee, and of the same land infeoffed an abbot and his covent, or prior and his covent, to have and to hold to them and their successours in pure and perpetuall almes or in frankalmoigne, in such case the tenements were holden in frankalmoigne." Tenants in frankalmoign do no fealty or other temporal service to their lord, but are only bound to celebrate divine service in accordance with the Book of Common Prayer; and, if they fail to do so, the lord cannot distrain them, but can only complain to their ordinary or visitor. See TENURE BY DIVINE SERVICE.

The word is derived from the Norman French, *fraunche aumoyne*, or *aumone*=free alms.

Frankbank. "In some boroughes," says Littleton, "by custome, the wife shall have for her dower all the tenements which were her husband's. And this is called frank banke, *francus bancus.*" See DOWER; FREEBENCH.

Frank-chase. A free chase. See CHASE. A right of free chase over any area restricted the right of persons holding land within that area to cut even their own timber.

Frank-fee. Freehold land, especially as distinguished from land in ancient demesne (q.v.) or copyhold (q.v.).

Frank-ferme. Land, the tenure of which had been changed by feoffment from knight service (q.v.) to socage (q.v.).

Frank-foldage. The same as foldage (q.v.).

Franking Letters. In 1660 the members of both Houses of Parliament claimed the privilege of "franking" letters, etc., that is to say, of sending them through the post free of charge merely by writing their signatures on the outside. They were permitted to do this without any right, statutory or otherwise, until the privilege was legalised by the statute 4 Geo. 3, c. 24, which, however, restricted the right to letters, etc., not exceeding two ounces in weight, thereby stopping the franking of many things which certainly were not letters, and restricted to ten the number of letters that might be sent on any one day by any peer or M.P. But M.P.s used to supply friends and constituents with numbers of covers bearing only their signatures for use at any time; and there was no means of keeping an M.P. within his limit of ten a day. The statute 7 Will. 4, and 1 Vict., c. 35, s. 9, made it obligatory on every peer or M.P. who wished to frank a letter to write thereon, in his own hand, not merely his signature, but also the full name and address of the addressee as well as the date, and to post the letter on that date in or within twenty miles of the town where the peer or M.P. actually was; and the name of the town also had to

be written by the peer or M.P. The privilege was completely abolished by the Post Office (Duties) Act, 1840, s. 55.

Concurrently with this parliamentary privilege there had existed, and there still exists, the privilege of certain high officials and of certain Government offices to send and receive letters upon which no stamp need be used, and members of either House of Parliament can send unstamped letters from the Houses of Parliament and letters addressed to them there need not be stamped; but such letters are not said to be franked.

Frank-law. The rights secured to a man by the common law. When a man lost his frank-law, the effect, according to Crompton (1583), was that he could not serve on a jury, he could not appear in the King's Court except by an attorney, his lands and goods were seized into the king's hand, his lands were estreated and he was committed to prison. Crompton says that a conviction for conspiracy involved these consequences.

Frankmarriage. When land was given with the words "in frankmarriage" to a man and his wife by the father or some blood relation of the wife, then she and her husband had the land to them and their issue, although no words of inheritance or procreation were used in the gift. They had therefore a kind of estate in tail special, the peculiarity of which was that they and their issue to the fourth degree held the land free of services to the donor, and that they had to bring it into hotchpot before they could take any other land by descent in fee simple from the donor. (See ESTATE TAIL; HOTCHPOT.) It is now obsolete.

Frankmarriage (free marriage) is a translation of the low Latin *liberum maritagium*. *Maritagium* was a dowry or gift to a woman about to marry: it was said to be "free" when it was free from services. "*Maritagium*," said Bracton, "*est aut liberium aut servitio obligatum*" (*lib.* 3, c. 7), that is to say, a *maritagium* is either free or subject to service.

The words *in liberum maritagium* were words of art: the effect produced by them could not be produced by other words of the same meaning. Thus, a gift of lands "*in connubio soluto ab omni servitio*" passed only an estate for life instead of an estate in tail special. See *Co. Litt.* 21.

Frankpledge (Norman French *franc plege* = free pledge) is a mistranslation of the Saxon word *friborh* or *frithborh*, literally pledge or surety for peace; it was the name given to those associations of ten persons into which, about the time of the Conquest, all men were bound to combine themselves. They were standing sureties for one another's good behaviour. The "view of frankpledge," or duty of seeing that these associations were kept in perfect order and number, was vested in the local Courts, especially the Courts Leet (q.v.). See HEADBOROUGH.

Frank-tenement is the same as "freehold" (q.v.).

Frassetum. A place on which ash trees are growing. The more correct form is *fraxinetum*.

Frater fratri uterino non succedet in hæreditate paternâ (*Fort. de Laud*, by Amos, 15). (A brother shall not succeed a brother by the mother's side in the paternal inheritance.) This, however, is not now law. See BLOOD.

Fratriagium. This is stated by Jacob (1749) to have meant a younger brother's inheritance; and he adds, citing Bracton, *Lib.* 2, *c.* 35, that for what the younger brother took he did homage to the elder brother, who in his turn did homage to the lord. But homage was an incident only of freehold land, and such land could be inherited only by the eldest brother. Even in the time of Glanvil, the tenant could alienate either the whole or sometimes only (see HEREDITAS) a "reasonable part" of his land during his lifetime—there was no will of lands until long after the time of Glanvil—in order, amongst other things, to portion a son or a daughter; and a portion so alienated, when the alienation was to a younger son, would appear to have been described as *Fratriagium*.

Fraud is used in many senses, but the point common to all of them is that pecuniary advantage is gained by unfair means.

I. Actual fraud is where one person causes pecuniary injury to another by intentionally misrepresenting or concealing a material fact which from their mutual position he was bound to explain or disclose. (See MISREPRESENTATION; CONCEALMENT.) This kind of fraud is also sometimes called "personal" or "moral," as opposed to "legal" or "constructive" fraud (*infra*). The difficulty in saying whether a particular act amounts to fraud lies in the necessity of determining what relation gives rise to the obligation to disclose a fact which, if disclosed, would materially affect the conduct of the defrauded person: and as the variations of human transactions and circumstances are infinite, an exhaustive enumeration of the relations giving occasion for fraud is impossible. Moreover, in many

cases, the effect of fraud may be counteracted by the conduct of the defrauded person: as where he does not rely on the representation (see *Dolus dans locum contractui*), or where he is guilty of gross negligence.

The following are some of the more important instances of actual fraud.

If a person by intentional misrepresentation or concealment of a material fact peculiarly within his own knowledge induces another person to enter into a contract, conveyance or similar transaction with him, which he would not have entered into had he known the truth, the contract or other transaction is fraudulent: as where a person is induced to purchase a business by false accounts of its position and profits. Fraud also exists when a person enters into a contract, conveyance or similar transaction, with the intention of afterwards doing some act of such a nature that if the other party had known of his intention he would not have entered into the transaction. Accordingly if A induces B to enter into a contract with him with the object of committing an illegal or unlawful act to the injury of B, that is a fraud on B: thus a separation deed is fraudulent if the wife's real object in entering into it is to enable her to renew a former illicit intercourse which has been concealed from the husband; so it is a fraud to buy goods with the intention of not paying for them.

II. Fraud sometimes exists where no wrongful intention is proved. In this sense of the word, "fraud," or "constructive" or "legal fraud," is a comprehensive expression which indicates the cases in which a Court will not enforce or will set aside a contract, instrument or transaction, in which the Court is of opinion that it is unconscientious for a person to avail himself of the advantage which he has obtained. The principal instances of this kind of fraud are as follows:— First, the fraud may be apparent from the intrinsic nature and subject of the bargain itself, such as no man in his senses and not under delusion would accept on the one hand, and as no honest and fair man would accept on the other, which are inequitable and unconscientious bargains: and of such even the common law has taken notice. A well-known instance is the case in which a man agreed to buy a horse—worth about £8—for a barleycorn for the first nail in the horse's shoes, two for the second, and so on for each of the thirty-two nails, which made in all about 500 quarters of barley. Secondly, the fraud may be presumed from the circumstances and condition of the parties contracting, by that rule of equity established to prevent one person from taking surreptitious advantage of the weakness or necessity of another, "which knowingly to do is equally against conscience as to take advantage of his ignorance; a person is equally unable to judge for himself in one as the other." The principal instances of this kind of fraud occur (1) where there is a confidential or fiduciary relation between the parties; hence all contracts and conveyances whereby benefits are secured by children to their parents or guardians, and between *cestui que trusts* and their trustees, are always liable to be set aside, unless they are entered into with scrupulous good faith and are reasonable under the circumstances; (2) where one person takes an unfair advantage of the necessities or inexperience of another: it is on this ground that "catching bargains" (q.v.) with heirs, reversioners and expectants for the sale of their reversions or expectancies during the life of their parents and ancestors used formerly to be set aside merely because of the inadequacy of the price. Thirdly, a transaction may be fraudulent on the ground of public policy. To this class belong marriage brocage contracts (q.v.). "Frauds on third persons" are where one enters into an arrangement with or incurs an obligation to another, and at the same time, or afterwards, does an act without his knowledge by which the benefit of the arrangement or obligation is partly or wholly destroyed. The following is an instance:— If an insolvent debtor enters into an arrangement with the general body of his creditors by which they accept a proportion of their debts in satisfaction of the whole, and the debtor, or any person on his behalf, in order to procure the consent of some particular creditor, secretly promises him an advantage over the others, this agreement is void as being "in fraud of creditors."

A person to whom a power of appointment is given must exercise it *bonâ fide* for the end designed by the donor, otherwise the appointment will be set aside on the ground that it is what is termed a fraud on the power. Thus, if a parent having a power of appointing an estate to any of his children, appoints it to one upon a previous bargain with that child that he should pay the father a consideration for it, the Court will set aside the appointment. So it seems that if a power is given to a person to appoint by will only, a covenant by him to exercise it in a particular way is void, being a fraud on the power.

An act may be a fraud on the public: on this

principle, an agreement to publish a work under a misleading title will not be enforced by the Court.

An act is sometimes said to be a fraud on a statute when it is an evasion of its provisions. For example, A sold a patent to B in consideration of B paying him royalties; B at the same time lent A £12,500, and it was agreed that B should retain one-half of the royalties as they became payable towards satisfaction of the debt, provided that if A became bankrupt B might retain the whole of the royalties in satisfaction of the debt: this proviso was held to be a fraud upon the bankruptcy laws and void.

III. Certain acts are made frauds by statute. Thus, by the Companies Act, 1867, s. 38, a prospectus which did not comply with the requirements of the Act in specifying all contracts entered into by the company, or the promoters, trustees or directors thereof, before the issue of the prospectus, was to be deemed fraudulent. This is an instance of "legal" fraud, in which proof of fraudulent intention is not required (*supra*, and see FRAUDULENT CONVEYANCES; FRAUDULENT PREFERENCE). See MARITAL RIGHTS.

The effect of fraud may be said in general to be to entitle the injured person to avoid the transaction induced by the fraud (*e.g.*, in the case of a contract, to have it rescinded) or to recover damages for the injury (see DECEIT); it gives rise to a defence to any action brought by the fraudulent party to enforce the contract or other transaction, but it does not make it void *ab initio*. In some cases an act is both a fraud on A and also wrongful against B, as in the case of the wrongful use of trade marks and trade names (q.v.). An agreement in fraud of third persons, or one which is a fraud on a statute, or on the public, is void *ab initio*, and not merely voidable. See VOID; VOIDABLE.

Certain frauds are also dealt with by the criminal law, and constitute misdemeanours. Such are frauds committed by public officers in discharge of their duties and affecting the public, and frauds committed by trustees (Larceny Act, 1916, s. 21), directors and other officers (*ib.* ss. 20, 21; Larceny Act, 1861, ss. 82-84).

Frauds, Statute of. See STATUTE OF FRAUDS.

Fraudulent Conveyance. By the statute 13 Eliz. c. 5, conveyances of landed estates or of goods, made for the purpose of delaying, hindering or defrauding creditors, are void as against them unless made for valuable consideration and *bonâ fide* to a person not having notice of the fraud.

By the Bankruptcy Act, 1914, s. 1, a fraudulent conveyance, gift, delivery or transfer by a debtor of his property or any part thereof, is an act of bankruptcy (q.v.): by "fraudulent" is meant that the conveyance is one which tends to defeat or delay the creditors. See FRAUDULENT PREFERENCE.

Fraudulent Creditor. "If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanour" (Bankruptcy Act, 1914, s. 160).

Fraudulent Debtor. See the Bankruptcy Act, 1914, ss. 154-159, and DEBTORS ACT, 1869.

Fraudulent Preference. The doctrine of fraudulent preference has for its object to prevent a debtor on the eve of bankruptcy from making a voluntary distribution of his property amongst his creditors, so as to defeat the distribution which is contemplated by the bankruptcy laws. Accordingly, every conveyance of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by an insolvent person in favour of any creditor with a view of giving that creditor a preference over the others, will, if the insolvent becomes bankrupt within three months after the conveyance, payment, etc., be deemed fraudulent and void as against the trustee in bankruptcy (Bankruptcy Act, 1914, s. 44). The doctrine of fraudulent preference also applies to insolvent companies (Companies (Consolidation) Act, 1908, s. 210).

Fraudulent Settlement. Where an antenuptial settlement comprises property without which the settlor cannot pay all his debts or contains a covenant for the settlement of any property (not being property of or in right of the wife) in which he has not any present estate or interest, then, if the settlor becomes bankrupt or compounds or arranges with his creditors, and if it appears to the Court that the settlement was made with intent to defeat creditors or to have been unjustifiable in view of the state of the settlor's affairs when it was made, the Court may refuse, suspend or grant only conditionally an order of discharge, or refuse to approve a composition or arrangement as if the debtor had been guilty of fraud (Bankruptcy Act, 1914, s. 27). It must, however, be recollected that marriage is a

valuable consideration; and unless both parties to the settlement are cognisant of the facts which make the settlement fraudulent *quoad* one of them, then the settlement is not void as being a fraudulent conveyance (q.v.).

Fraus est celare fraudem (1 *Vern.* 270). (It is fraud to conceal fraud.) Said by Lord Chancellor Jeffreys of one who had made an unconscionable bargain and had deliberately refrained from acquiring knowledge which would have fixed him with knowledge of facts fatal to his contention that the transaction was honest on his part.

Fraus est odiosa et non præsumenda (*Cro. Car.* 550). (Fraud is hateful and not to be presumed.)

Fraus et dolus nemini patrocinari debent (3 *Rep.* 78*b*). (Fraud and deceit ought not to avail anyone.) Compare *Ex dolo malo, etc.; Nemo ex suo delicto, etc.*

Fraus et jus nunquam cohabitant (*Wing. Max.* 158). (Fraud and right [enforceable at law] never dwell together.) That is to say, they are incompatible.

Fredstole; Fridstol. Forms of "frithstool" (q.v.).

Fredum. Stated by Jacob to have been a composition paid by a criminal for freedom from prosecution.

Fredwit. Stated by Cowel to have been a liberty to hold courts.

Free. See CHAPEL; FISHERY; SERVICE; SOCAGE; WARREN. As to free miners, see GALE.

Freebench is an estate which by the custom of most manors the widow of a copyholder has in the land of which her husband was tenant. The nature and duration of the estate, and the quantity of the lands to which it extends, vary according to the particular custom, but in many points freebench closely resembles dower (q.v.). Although the Dower Act, 1833, does not apply to copyholds, the widow's right to freebench is in most manors subject to any alienations of the land made by the husband, whether *inter vivos* or by will; it is, however, paramount to his debts. The right to freebench is enforced by an action similar to an action of dower. See DOWER.

In some places the widower of a female copyholder has by custom an estate in his wife's lands analogous to an estate by the curtesy in freeholds, and called his "man's freebench" or customary curtesy. (See CURTESY). This is called frank-bank (q.v.).

Freeboard; Freebord. This seems to mean a strip of land lying, for a width varying in different cases, outside the fence enclosing an ancient park. The usual width seems to be about two and a half feet: in the case of Richmond Park it is stated to be sixteen feet and a half. It would seem not to be necessarily the property of the owner of the park, who, however, can prevent anyone from building on it or otherwise depriving it of its open character.

Freeborough Men. Jacob (1749) states that this meant men of high position who were not required to give and get the sureties for good behaviour required under the frankpledge (q.v.) system. But it does not appear where he got either the word or its meaning. The word freeborough is obviously only a late form of friborough (q.v.), and freeborough men would appear to have meant persons who were in fact subject to frankpledge.

Freedom from Incumbrance. As to the covenant on this subject, formerly universal in conveyances but now never used, see COVENANTS.

Freedom of a Borough. A person who is a freeman of a borough is said to possess the freedom of the borough. Before the enactment of the Municipal Corporations Act, 1835, the freedom of each borough was regulated by its local customs in so far as those customs were not inconsistent with its charter. The freemen formed a part of the corporation of each borough: usually they had the right to vote at parliamentary elections and were exempt from the borough tolls and dues; and in many boroughs the corporate property was held for their benefit exclusively. As a rule, freedom was acquired either by birth, marriage, apprenticeship to a freeman, gift or purchase. Under the Act of 1835, s. 2, all the existing rights of admission, otherwise than by gift or purchase, to the freedom and all the existing rights and privileges of freemen were preserved, except that the exemption from tolls and dues was restricted to persons who in 1835 had been, or were entitled to be, admitted as freemen, or were the wives, sons, daughters, or apprentices of a freeman, or were inhabitants of the various boroughs.

The Representation of the People Acts, 1832 and 1867, by ss. 32 and 56 respectively, preserved the right of freemen to the parliamentary franchise, but now the Representation of the People Act, 1918, s. 47, Sch. 8, has repealed those sections, and no freeman, as such, has any longer the right to vote at a parliamentary election. The term freeman now means anyone who might have become a freeman, otherwise than by gift or purchase, if the Act of 1835 had not been passed, and

every person who is an inhabitant of a borough or the wife, widow, son or daughter of a freeman, or the husband of the daughter or of the widow of a freeman, or a person who has served his apprenticeship to a freeman (Municipal Corporations Act, 1882, ss. 201, 205).

Under the Honorary Freedom of Boroughs Act, 1885, a borough may admit as "honorary freemen" persons of distinction or persons who have rendered eminent services to the borough, but such persons acquire none of the rights of freemen.

None of the enactments above mentioned, except the Representation of the People Act, 1918, apply to the City of London (see LONDON). In the City, anyone may, in accordance with ancient custom, be made a freeman, as a mark of honour, by a vote of the Court of Common Council.

Free Entry, Egress and Regress is an expression used to denote that a person has the right to go on land again and again as often as may be reasonably necessary. Thus in the case of a tenant entitled to emblements (q.v.) after the expiration of his tenancy, the law, says Coke, "giveth him a speedy remedy to enter into the land, and to take and carry [the crop] away, and compelleth not him to take it at one time, or to carry it before it be ready to be carried; and therefore the law giveth all that is convenient, viz., free entry, egresse and regresse as much as is necessary."

Free Fold is said to be the same as foldage or faldage (q.v.), but it would seem to denote the right of the tenant to have his sheep folded by the lord, rather than the right of the lord to have the tenant's sheep on his land.

Free Goods. See FREE SHIPS.

Freehold is applied to interests in land in two senses, either to denote the quality of an estate, or to denote the tenure by which the land is held.

With reference to the quality of an estate, "every one," says Littleton, "which hath an estate in any lands or tenements for term of his owne life or another man's life, is called tenant of freehold, and none other of a lesser estate [*e.g.*, a tenant for years] can have a freehold; but they of a greater estate have a freehold; for he in fee simple hath a freehold, and tenant in taile hath a freehold, etc." Hence estates of freehold are opposed to estates for years and other chattel interests. (See ESTATE; INTEREST.) In the old writers "freehold" is used generally to denote an estate for life as opposed to a reversion. An estate of freehold descendible is an estate given to A and his heirs or the heirs of his body during the life of B. See QUASI-TAIL; OCCUPANT.

With reference to its tenure, land is said to be freehold when it is held by socage tenure (or by knight's service or other military tenure when those tenures existed), as opposed to land held by villeinage or customary tenures, such as copyhold land. (See SERVICE; TENURE.) Where two persons enter into a contract for the purchase and sale of land, whether in fee simple or otherwise, they are presumed to intend freehold land unless the nature of its tenure appears, and therefore if it turns out to be copyhold the purchaser cannot be compelled to carry out the contract, unless the tenure is in reality equivalent to freehold.

"Freehold" originally meant an estate held by a freeman, as opposed to "villeinage" (q.v.). It seems to have been originally used in much the same sense as seisin (q.v.), that is, the feudal possession of land. Thus in the old books a distinction is drawn between freehold in deed and freehold in law. Where a man dies seised of land so that it descends to his son, then until the son enters on the land he has only a freehold in law, which, however, is sufficient to entitle his wife to dower if he dies before entry.

Freehold Land Societies. Before the Industrial and Provident Societies Act, 1893, came into force freehold land societies were formed under the Building Societies Acts. In a freehold land society subscriptions are received from the members in the way generally adopted by building societies, and, with the funds thus acquired, an estate is purchased in some eligible situation. The property is then laid out in lots of a size suited to the wants of the members; roads are made, and other improvements effected, the cost of which, and of the conveyance to the society, is added to the amount of the purchase-money. The total sum thus expended upon the whole estate is then equitably apportioned amongst the several lots, and determines their price. The members are thus enabled to obtain a small quantity of land at wholesale price. As a building society formed under the Building Societies Acts cannot legally hold land, except as security for advances, such an arrangement as the one above described was down to 1893 in reality *ultra vires*, and had to be effected through the medium of trustees, on whose honour the members had to rely: but now a freehold land society can be, and generally is, registered under the Industrial and Provident Societies Act, 1893, and when

this is done, it can buy and sell land as it pleases.

See BUILDING SOCIETIES.

Freeman. A livery-man (q.v.).

See FREEDOM OF A BOROUGH.

Freemasons. Lodges of Freemasons are exempted by s. 5 of the Unlawful Societies Act, 1799, from the operation of that Act, provided (see ss. 6, 7) that they are duly registered under the Act; and s. 26 of the Seditious Meetings Act, 1817, provides that such registration shall also prevent that Act from applying. Consequently there is nothing illegal in the holding of masonic meetings.

Free Schools. This was the popular name of endowed schools, not being grammar schools (q.v.), at which instruction was given gratuitously. A grammar school at which instruction was given without payment was known as a free grammar school.

Free Ships. In the much-debated doctrine of international law which is summed up in the phrase, "free ships make free goods," a "free ship" means a neutral ship, while "free goods" means goods immune from capture by a belligerent.

Free Warren. See WARREN.

Freight. Strictly speaking, freight is the reward payable to a carrier by sea for the safe carriage and delivery of goods. Hence in ordinary cases it does not become payable unless the voyage is completed and the goods carried to their destination; but in some cases, where a part only of the voyage has been performed, freight is recoverable for that portion *pro ratâ* [*parte* or *portione*] *itineris peracti* (proportionally to the portion of the voyage performed): thus if the consignee voluntarily accepts the goods at a point short of their destination in such a way as to raise a fair inference that the further carriage is intentionally dispensed with, a new contract will be implied to pay freight for that portion of the voyage which has actually been performed.

When freight is prepaid, it is not strictly speaking freight at all and its nature differs considerably from that of ordinary freight, for it then ceases to be dependent on the safe delivery of the goods, and therefore if the goods are lost the shipowner is not liable to refund the prepaid freight.

In ordinary cases, the shipowner has a right of action against the consignor, or sometimes also against the consignee, for the recovery of the freight, and also has a lien on the goods for the amount, unless he has entered into a contract inconsistent with or expressly waiving his right of lien. As to the continuance of lien after the goods have been landed and warehoused, see the Merchant Shipping Act, 1894, ss. 494-5.

Dead freight is money payable by a person who has chartered a ship and only partly loaded her, in respect of the loss of freight caused to the shipowner by the deficiency of cargo. There is no lien for dead freight.

See AFFREIGHTMENT; BILL OF LADING; CHARTERPARTY; LIEN.

French. The statute 36 Edw. 3, st. 1, c. 15, required pleadings—which were then delivered orally in open Court—to be in English instead of "in the French tongue which is much unknown in the realm." It further enacted that they should be entered and enrolled in Latin. The statute itself, like others of the period, is in French, and it was only after 1485 that English appeared in the statutes. The earliest statutes had been in Latin; later on one (*e.g.*, 3 Edw. 1) is in French, while another (*e.g.*, 4 Edw. 1) is in Latin again; but by 1309 French had become the more usual.

In 1731 the statute 4 Geo. 2, c. 26, ss. 1, 3, provided that as from 25th March, 1733, all pleadings, etc., except in the old Court of Admiralty, should be in English instead of in Latin. See FALSE LATIN.

French (or Fancy) Bread. This means bread which is different in appearance from ordinary household bread. Bread which is of the same quality as ordinary household bread may be "fancy bread" if baked of a fancy shape; and bread superior in quality to ordinary household bread is not fancy bread if it is baked in such a shape as to be indistinguishable by the eye from bread which is ordinary household bread as regards both quality and shape. See BREAD.

Frendwite. Stated by Blount to have been a pecuniary penalty for harbouring a friend who was an outlaw.

Frequentia actus multum operatur (4 *Rep.* 78; *Wing. Max.* 192). "The frequency of an act operates much": and so where the Princes of Wales had repeatedly acted as absolute owners of the duchy of Cornwall, this all went to show that each of them held in fee simple.

Fresh Disseisin. This was a disseisin (q.v.) of recent occurrence which a man in Bracton's time might defeat by his own power without having recourse to the law. See ASSISE OF NOVEL DESSEISIN: compare FORCIBLE ENTRY.

Fresh Fine. A fine (q.v.) which had been levied within the preceding year. See the Statute of Westminster II., c. 45.

Fresh Force. This was a force (q.v.) newly done within a city or borough. If it constituted a disseisin, then the party disseised might within forty days after the "force" bring his "assize (or bill) of fresh force" and recover the land.

Fresh Suit. In the law of distress, if the landlord comes to distrain and sees the tenant's cattle on the land, and the tenant, to prevent the distress, drives the cattle off the land, then if the lord makes fresh suit that is to say, follows the cattle, then and there, he may distrain them, although they are not on the land which the tenant holds of him.

"Suit" here means pursuit.

Freshwater Fish. See EELS.

Friborough; Friburg; Frithburgh. The spurious "Laws of Edward the Confessor" (1200) speak of the system "quam Angli vocant *frithborgas*," "Frithburg" was the proper form: "Friburg," or "freeborough," were corrupt forms, and frankpledge (q.v.) is a mistranslation of these corrupt forms.

Friendless Man. Anciently this meant an outlaw. The phrase (in the form *freondleas man*) occurs in the laws of Canute. See CANUTE, ETC.

Friendly Societies are now all registered, or treated as registered, under the Friendly Societies Act, 1896, 59 & 60 Vict., c. 25 (see s. 101). They are societies established to provide, by the voluntary subscriptions of their members, for the relief or maintenance of the members and their families during sickness or old age, or for the relief or maintenance of the widows and orphan children of deceased members, or similar objects (Friendly Societies Act, 1896, s. 8). Such societies have no legal status unless they are registered in pursuance of the Friendly Societies Act, 1896, or of one of the earlier Friendly Societies Acts which were repealed and replaced by that Act. (See REGISTRAR.) Every registered society has one or more trustees in whom its property is vested (*ib.*, s. 49), and who take and defend legal proceedings on its behalf (*ib.*, s. 94). It must be regulated by rules defining its objects, the mode of holding meetings, the rates of the subscriptions and of the allowances during sickness and on death, the investments in which the funds are to be placed, etc., etc. (*ib.*, s. 9 (2), (3), Sch. I.).

Friendly societies are intended for the encouragement of the frugal and industrious poor, and the legislature has therefore limited the amount to which any person can become entitled by being a member of one or more societies, to £300 by way of gross sum, and £52 a year by way of annuity (*ib.*, s. 41).

A society with branches is one in which the members are divided into branches or groups, each having a separate fund administered by itself, although they are all under the control of a central body, and are all bound to contribute to a fund under the control of the central body (*ib.*, s. 106).

Friendly societies are of numerous varieties, but the only two requiring mention here are deposit societies and dividing societies. A deposit society combines the functions of a savings bank with those of a friendly society, in a manner too complicated to be here described: as to such a society see s. 42 of the Act of 1896. A dividing society is one which periodically divides its funds among its members, the simplest plan being for the members to subscribe a fixed sum weekly or monthly, receiving in return certain benefits in case of sickness or death during the current year, at the end of which period the surplus funds are divided among the members: but such a society cannot be registered under the Act of 1896 unless it complies with s. 15 thereof.

See BENEVOLENT SOCIETIES; CATTLE INSURANCE SOCIETIES; COLLECTING SOCIETIES; WORKING MEN'S CLUBS; BUILDING SOCIETIES; INDUSTRIAL INSURANCE COMPANY; INDUSTRIAL AND PROVIDENT SOCIETIES; NOMINATION; DISSOLUTION.

Friendly Suit. This means a suit brought between parties by mutual arrangement in order to obtain a decision upon some point in which both are interested. In the old Chancery practice it meant a bill filed by consent of the Court, against executors or administrators, really by themselves but nominally at the instance of a creditor, in order to compel creditors to take an equal distribution of assets in an administration action.

Frith. The peace; found in many compounds of which some are given below.

Frithborgh. Frankpledge (q.v.).

Frithbreach. In Anglo-Saxon times this meant a breach of the peace.

Frith-gild. A guild or association for the maintenance of peace. See the *Laws of Athelstan*, lib. 6, c. 8, par. 9.

Frith-mote. From the *Placita in itinere apud Cestriam* of the 14 Hen. 7, this would seem to have been a local court of civil jurisdiction in the county palatine of Chester.

Frith Silver. This was an annual payment, charged upon the poor-rates of the parish of Alrewas, near Lichfield, which was made to

Lord Somers down to the middle of the last century.

Frithsoken. The right to take the view of frankpledge (q.v.).

Frithstool. Literally, the seat of peace. It was a seat placed inside certain churches: anyone seeking sanctuary and seating himself in it was inviolable.

Frontage; Frontager. A frontager is a person owning or occupying land which abuts on a highway, river, seashore, or the like. The term is generally used with reference to the liability of frontagers on streets to contribute towards the expense of paving, draining, or other works on the highway carried out by a local authority, in proportion to the frontage of their respective tenements. It is also used with reference to rights of access (q.v.).

A frontager on the sea is under no liability at common law, apart from prescription, to maintain a sea wall on his land.

Fruit. As to compensation to market gardeners in respect of fruit trees planted by them on lands which they rent, see MARKET GARDEN.

Larceny of fruit is dealt with in the Larceny Act, 1861, ss. 36, 37, and malicious damage to it is dealt with in the Malicious Damage Act, 1861, ss. 23, 24.

Frusca terræ. Waste lands.

Frustrà fit per plura, quod fieri potest per pauciora (*Wing. Max.* 177). (It is useless to employ a multiplicity of agents when a less number will suffice). There is no use in employing several [instruments] to effectuate anything which can be done by a single instrument.

Frustrà legis auxilium quærit qui in legem committit (2 *Hale P.C.* 386). (He who offends against the law vainly seeks the help of the law.) And so an executor *de son tort* must go without remedies which are available for an executor duly appointed.

Frustrà probatur quod probatum non relevat (*Halk. Max.* 50). (It is useless to prove anything which does not improve your case.)

Frustrum terræ. A plot of land.

Fryzer. See SHEARMAN.

Fuage. See FUMAGE.

Fuel. See ESTOVERS.

Fuer; Fugere. The old French and the Latin respectively for "to fly." Both words were, however, used as nouns meaning flight. There was *fuer in fait* (*fugere in facta*), when an accused person literally ran away; and *fuer in ley* (*fugere in lege*) when upon an accused person being called to appear in the old county court, he failed so to do.

Fugacia. A chase (q.v.).

Fugam fecit. (He has made flight.) When a jury found, even in case of acquittal, that one charged with treason or felony had fled, such person anciently forfeited his lands and goods. Non-appearance to an indictment was held in law to amount to flight. The Criminal Law Act, 1827, s. 5, provided that a jury should not be charged to enquire whether any person indicted for treason or felony had fled; and the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), practically abolished forfeiture (q.v.). See FUER.

Fugitive Offenders. See BACKING A WARRANT; EXTRADITION.

Fugitive's Goods. The goods of a man which had been forfeited because he had made flight. (See FUGAM FECIT.) Where a man fled for felony and escaped, his own goods were not forfeited as *bona fugitivorum* until it was found by proceedings of record (*e.g.*, before the coroner, in case of death) that he fled for the felony. See WAIF.

Full Age. This is attained as from the first moment of the day preceding the twenty-first birthday.

Full Court. See INSTRUMENT OF APPEAL.

Fullers' Rents. See PRIVILEGED PLACES.

Fumage; Fuage; Fouage; Fumagium. A tax, popularly called smoke-farthings, which anciently was levied upon every house having a chimney. It is mentioned in Domesday. See HEARTH-MONEY.

Fumage (*fumagium*) also meant both manure and the manuring of land.

Fumotho. This word, which occurs in the statute 14 Car. 2, c. 31, is a form of *fumodo* (a smoked pilchard).

Functus officio, "having discharged his duty," is an expression applied to an agent or donee of an authority who has performed the act authorised, so that the authority is exhausted and at an end.

Fund. In its widest sense, a fund is a sum of money available for the payment or discharge of liabilities. Thus, the assets of a testator form a fund for the payment of his debts. (See BLENDED FUND.) So the borough fund (q.v.) of a corporation is primarily liable for defraying the expenses of the borough.

As to the Chancery funds, see PAY OFFICE.

In its narrower and more usual sense, "fund" signifies capital, as opposed to interest or income; as where we speak of a company funding the arrears of interest due on its debentures, or the like, meaning that the interest is capitalised and made to bear interest in its turn, until it is repaid.

The national debt of Great Britain is in part funded, and in part unfunded, the former being that which is secured to the creditor or holder upon the public funds, the latter that which is not so provided for. The unfunded debt is comparatively but of small amount, and is generally secured by Treasury bills (q.v.), and Exchequer bonds (q.v.). The funded debt consists of annuities, as they are called, granted to those who originally advanced the money, being the right to receive an annual sum equal to interest at a certain rate on the principal advanced. As regards the funded debt existing before the war of 1914-18, the principal itself is not repayable, except at the option of the Government. These annuities are charged on the Consolidated Fund (q.v.), and are themselves popularly called the public funds. They are a species of personal property, passing by transfer *inter vivos*, or on the death of the holder to his personal representatives. Since 2nd August, 1914, the funded debt has been increased nearly tenfold, and this portion of the funded debt must be redeemed at various dates which were fixed when the various additions to the debt were made from time to time.

Furca et Fossa. In ancient grants of criminal jurisdiction the king gave the right of using *furca et fossa* (the gallows and the pit); the first being for the hanging of felons who were men, and the second for the drowning of felons who were women.

Furcam et Flagellum, Ad. A bondman whose life and limb were at the disposal of his lord was said to hold *ad furcam et flagellum* (at the gallows and the scourge).

Furigeldum. In Anglo-Saxon law this was a pecuniary penalty for theft.

Furiosi nulla voluntas est (*D.* 50, 17, 5). (A madman has no free will.) Consequently, for instance, he cannot conceive the *animus furandi* essential to larceny, nor any other criminal intention. Compare ACTUS NON FACIT, etc.

Furiosus solo furore punitur (*Co. Litt.* 247). (A madman is punished only by his madness.) That is to say, he cannot be punished by the law.

Furiosus stipulare non potest, nec aliquid negotium agere, quia non intelligit quod agit. (A lunatic cannot enter into a contract or transact any business because he does not know what he is doing.)

Furlong; Furelingus. Originally this meant the length of a furrow in a field of ten acres. Where the acre was of the area (4,840 square yards) fixed by s. 12 of the Weights and Measures Act, 1878, then the length of the furrow would be the 220 yards fixed by s. 11, which makes it the one-eighth of a statute mile: and a furlong as a measure of length has, for over a thousand years, meant one-eighth of a mile. It was also used as meaning one-eighth of an acre.

Furlough. In the case of anyone below the rank of an officer who is subject to military law, permission for absence from duty is known as furlough. See, for instance, the Army Act, s. 173. The word was formerly used in connection with officers, who, however, are now said to be on leave of absence.

Furnage; Furnagium. Fornagium (q.v.).

Furniture. See BILLS OF SALE; FIXTURES; HEIRLOOMS; ORDER AND DISPOSITION; HIRE-PURCHASE AGREEMENT.

Furnival's Inn. See INNS OF CHANCERY.

Furst and Fondung. (Time to advise or take counsel.) See Leg. Hen. 1. c. 46, which inserts these Anglo-Saxon words into a sentence which, except for them, is in Latin.

Further Assurance. Formerly every conveyance contained a covenant that the vendor and his heirs would at the request and cost of the purchaser, or of anyone claiming through him, execute any further assurance necessary to complete the title of the purchaser. This covenant is now implied in every properly-drawn conveyance by s. 7 of the Conveyancing and Law of Property Act, 1881, and is never expressly inserted. See COVENANTS.

Further Consideration. Where, on motion for judgment made in an action, the Court has not before it the materials for finally determining all the questions in dispute and disposing of the action, it may reserve the further consideration of the action, and give directions for obtaining the necessary materials in the meantime (R. S. C., Ord. 40, r. 10).

Thus, in an action for the administration of an estate in the Chancery Division, the judgment commonly directs a number of inquiries and accounts to be made and taken in chambers (see INQUIRY); and when this has been done the action is heard on further consideration, and the rights of the parties are ascertained (see Ord. 36, r. 21). If all the questions arising in the action cannot then be disposed of, the further consideration may be again reserved, and so on. Sometimes the further consideration is taken in chambers, in order to save expense.

"Further Maintenance of the Action." See PLEA.

Furtum. Anciently this meant any kind of theft or of robbery.

Furtum est contrectatio rei alienæ fraudu-

lenta, cum animo furandi, invito illo domino cujus res illa fuerat (3 *Inst.* 107). (Theft is the wrongful appropriation of another man's property, without his consent, and with the intention of stealing it.) This is an extract from Bracton, lib. 3, fol. 150.

Furtum non est ubi initium habet detentionis per dominum rei (3 *Inst.* 107). (There is no theft where the original possession is with the consent of the owner of the goods.) These words are quoted by Coke from Glanvil, lib. 10, c. 13; they show that Glanvil, like Bracton, held that *furtum* could not be committed unless there had originally been a taking without the consent of the owner.

Furze. The malicious and unlawful burning of furze is punishable on indictment under the Malicious Damage Act, 1861, s. 17.

Future Estate. See ESTATE.

Future (or After) Acquired Property. An assignment of property which the assignor does not actually possess is in equity an agreement to assign it when he does in fact acquire it. An agreement that after-acquired property shall be brought into settlement is frequently found in marriage settlements.

G

G.B.E. See BRITISH EMPIRE, ETC.

G.C.B. See BATH, ETC.

G.C.I.E. See INDIAN EMPIRE, ETC.

G.C.M.G. See ST. MICHAEL, ETC.

G.C.S.I. See STAR OF INDIA, ETC.

G.C.V.O. See ROYAL VICTORIAN, ETC.

Gabel. Payment to a superior: tribute. Gavel is another and the more correct form of the word.

Gafol. The same of Gavel (q.v.).

Gage. The same as *vadium* (q.v.). In the ancient law as to replevin, to gage meant *gager de deliverance* (q.v.).

Gager de Deliverance. In the old procedure in the action of replevin *gager de deliverance* meant to give surety for the delivery of the goods which were in dispute.

Gager del Ley. The Norman French for wager of law (q.v.).

Gagging Acts. A popular title of the "Six Acts" (q.v.).

Gainable. Gainable land meant, not land capable of being reclaimed, but land ready for cultivation.

Gainage. The profit or produce of cultivated land; also used as the English equivalent for *wainnagium* (see Magna Charta, c. 20), that is, implements of husbandry. Lands reclaimed from the sea (see INNINGS) were sometimes known as gainage lands.

Gale. Under the Dean Forest (Mines) Act, 1838, passed to regulate the peculiar laws and customs of the coal, iron and other mines belonging to the Crown in the Forest of Dean and Hundred of St. Briavel's in Gloucestershire, the "free miners" of the district have the exclusive right of having gales or grants made to them, and of selling, devising or disposing of them to any persons whomsoever. All male persons born and abiding within the Hundred of St. Briavel's, of the age of twenty-one, who have worked a year and a day in a coal or iron mine within the hundred, are free miners. Quarrymen coming under a similar description, are deemed free miners for the purpose of obtaining gales of stone quarries. A person holding a gale is called a galee.

A gale is the right to open and work a mine within the Hundred of St. Briavel's, or a stone quarry within the open lands of the Forest of Dean. The right is a licence or interest in the nature of real estate, conditional on the due payment of rent and observance of the obligations imposed on the galee. It follows the ordinary rules as to the devolution and conveyance of real estate. The galee pays the Crown a rent known as a galeage rent, royalty or some similar name, proportionate to the quantity of minerals got from the mine or quarry. Provision is made for fixing the extent of the mine, pit or quarry comprised in each gale.

The gaveller (or deputy gaveller) is bound to grant gales to free miners in the order of their applications, which must be made in writing. Until the grant is actually made, the applicant has no interest or title. No free miner is entitled to more than three gales at a time.

"Gale" is a contraction of gavel (q.v.).

Galley-halfpenny. This coin seems to have been a Genoese silver coin of approximately the same value as the contemporary English silver halfpenny (q.v.) which Genoese galleys trading to London had introduced into circulation. The use of this coin, as well as of the suskin (q.v.) and doitkin (q.v.) and of all Scottish silver coins, was prohibited by the statute 3 Hen. 5, c. 1. That statute made the introduction into the realm of any of these coins a felony. An earlier statute, 11 Hen 4, c. 5, had merely enacted that the galley-halfpenny should be forfeited if used within the realm.

Gallon. The imperial gallon contains "ten

imperial standard pounds' weight of distilled water weighed in air against brass weights, with the water and the air at 62 degrees of Fahrenheit's thermometer, and with the barometer at thirty inches" (Weights and Measures Act, 1878, s. 15). This gallon contains 277.274 cubic inches: it is to be distinguished from the American gallon which contains 231 cubic inches.

Game consists of certain wild animals the hunting or taking of which is a recognised sport or pastime. The old writers divide wild animals into beasts of the forest and chase (harts, hinds, boars, foxes and wolves), and beasts and fowls of warren (hares, rabbits, pheasants and partridges), but under the statutes regulating the taking of game (commonly called the Game Laws), "game" consists of "hares, pheasants, partridges, grouse, heath or moor game, black-game and bustards" (Night Poaching Act, 1828, s. 13). Under these Acts the right to kill game upon any land is vested in the occupier thereof, unless he holds it under a lease or agreement by which the right is reserved to the landlord. But every person killing, taking or pursuing game (with certain exceptions, including persons entitled to kill game under the Ground Game (q.v.) Act, 1880), is required to take out a yearly excise licence (Game Licences Act, 1860), and persons who (having no such licence and not being authorised to sell and selling ground game under the Ground Game Act) deal in game, must take out two annual licences for the latter purpose, one a licence by justices of the peace (see *e.g.*, the Game Act, 1831, ss. 18, 24), the other an excise licence (Game Licences Act, 1860, s. 18; Revenue (No. 2) Act, 1861, s. 17). The Game Laws also contain provisions for the preservation of game and the eggs of game, and for the prevention of poaching, the contravention of which is punishable with fine or imprisonment (see especially the Night Poaching Act, 1828; the Larceny Act, 1861, ss. 12-17; and the Poaching Prevention Act, 1862): in the case of poachers armed with guns, the punishment is penal servitude (Night Poaching Act, 1828, s. 9).

As regards the property or ownership in game, the common law rules on this subject are founded on the principle of occupancy (q.v.), so that if A starts game on B's land, and kills it on C's land, the property in it vests in A: this rule, however, has been so far modified by the Game Act, 1831, s. 36, that if the trespasser is found on the land with the game in his possession, and in search or pursuit of other game, C may take the game from him. A trespasser is of course always liable to an action at law, and by s. 31 *et seq.* of the same statute, trespassing in search of game is made an offence punishable by fine on summary conviction. If A starts game on his own land and kills it on B's land, the property remains in A; but if, being a trespasser, he starts it on B's land and kills it there, the property vests in B.

There are special rules as to game confined in parks, chases, forests and warrens: see those titles. See ANIMALS FERÆ NATURÆ; ANIMALS, LIABILITY FOR; BUSTARDS; CLOSE SEASON; HARES; RABBITS.

Game Certificate. Before 1860 this was the equivalent of what is now known as a game licence (q.v.), and enactments referring to a game certificate (see *e.g.*, the Game Act, 1831, s. 13) are to be read as referring to a game licence.

Gamekeepers. Gamekeepers are divisible into two classes: (1) gamekeepers, properly so called, who are appointed under the Game Act, 1831, and (2) servants employed to look after game, who are colloquially known as gamekeepers.

The Game Act, 1831, s. 13, provides that it shall be lawful for "any lord of a manor, lordship or royalty, or reputed manor lordship or royalty, or any steward of the Crown of any manor lordship or royalty appertaining to His Majesty," to appoint, by writing under his hand and seal, a gamekeeper or gamekeepers for such manor, etc., and to authorise such gamekeeper to seize within such manor, etc., all dogs, nets and other engines used thereon for taking or killing game by any person not having a game certificate (q.v.); and s. 15 of the same Act empowers the owner of any lands in Wales worth £500 a year to appoint in like manner a gamekeeper for such lands and to give him a like authority to seize dogs, etc. No such appointment is to be valid until it is registered with the clerk of the peace (*ib.* s. 16).

The licence for a male servant must be taken out by the employer of a gamekeeper of either class (Revenue Act, 1869, s. 18); no gamekeeper of either class can kill game woodcock, snipe, quails or landrails unless either he or his employer has taken out a game licence for him (Revenue Act, 1869, s. 18).

A gamekeeper of either class has no power of arrest in respect of persons whom he finds poaching in the daytime unless such person either fails to give his true name and address

or refuses to leave or returns upon the land (Game Act, 1831, s. 31).

A gamekeeper of either class—unless he be employed by a person who has merely shooting rights over the land—can arrest anyone whom he finds unlawfully destroying or taking game at night upon, or upon the roads, etc., adjoining, the land belonging to his employer (Night Poaching Act, 1828, ss. 1, 2; Night Poaching Act, 1844); and he can also arrest persons who, to the number of three or more, one at least having an offensive weapon, unlawfully enter such lands at night for the purpose of taking or destroying either game or rabbits (Night Poaching Act, 1828, s. 9).

Game Licence. This is the authority to kill game, woodcock, snipe, quails, landrails, rabbits, or deer (only, however, during the open seasons and on lands where the holder of the licence has a right to shoot), which is issued under the Game Licence Act, 1860, as amended and extended by the Customs and Inland Revenue Act, 1883, ss. 4-6. If taken out after 31st July and before 1st November, the duty is £3 for a licence expiring on the 31st July in the following year, and £2 for one expiring on 31st October in the same year; if taken out after 1st November the duty is £2 for one to expire on the 31st July in the following year; the duty for a licence to cover any period of fourteen consecutive days is £1: and the duty for the whole year expiring 31st July is reduced to £2 in the case of a gamekeeper's licence authorising him to kill game on his master's lands.

Various persons, such as members of the Royal Family, are exempted from taking out game licences; and no licence is required for killing game in various cases, the most important of which are the hunting of hares with hounds or greyhounds and of deer with hounds (Game Licences Act, 1860, s. 5) and the killing of hares by the occupiers of land. (See GROUND GAME.)

Any person found in such circumstances that a game licence is necessary is liable to a penalty of £20 if he fails to produce a licence to, amongst others, any officer of Inland Revenue or any holder of a game licence or, upon lands for which there is a gamekeeper (q.v.) appointed under the Game Act, 1831, to such gamekeeper.

Games, Unlawful. See GAMING; CLOSH.

Gaming. This means to play at any game, whether lawful or unlawful, for money or money's worth. To constitute gaming, however, each player must have the chance of losing as well as of winning: and therefore a whist drive, played for prizes presented by persons other than the players, is not gaming.

Unlawful gaming includes all gaming in a common gaming-house (see GAMING-HOUSES), every game of cards which is not a game of mere skill, any game which is a game of mere chance, every game of dice (q.v. except backgammon), roulette, baccarat, and the obsolete games of ace of hearts, pharaoh, basset, passage, and hazard.

Under the Unlawful Games Act, 1728, s. 9, any person found playing any unlawful game may be committed by any justice to prison unless and until he shall enter into recognizance, with or without sureties, not henceforth to play any such game: but this Act does not appear to be now used. The Licensing (Consolidation) Act, 1910, s. 79 (1), provides that any holder of a justices' licence who suffers any gaming or unlawful game to be carried on upon his premises shall be liable to a penalty on summary conviction:

At common law, money won at any game could be recovered by action, and so, down to 1845, could money won at any game which was not unlawful; but now all contracts or agreements, whether by parole or in writing, by way of gaming or wagering are null and void (Gaming Act, 1845, s. 18), so that no money lost at gaming or on bets can be recovered at law even (Gaming Act, 1892) by a person who, as agent for the loser, has paid the money to the winner, unless the money lost at gaming or on bets is due not merely on the result of the game or other event in question, but on a new contract entered into for a good consideration, as where a man who owes money on a racing bet and is liable to be posted as a defaulter and to be warned off the Turf if he fails to pay, agrees to pay the money if his creditor will give him time and refrain from having him posted.

Money or other valuable thing lent for the purpose of gaming or betting upon any game whatsoever is not recoverable at law (Gaming Act, 1710, s. 1.; Gaming Act, 1835). For the purposes of these Acts the word "game" includes cards, dice, horse-races, dog-matches (including coursing), footraces, or other pastimes or games whatsoever: but it does not include gambling in a foreign country where gambling is not illegal: and it is to be noted that the Acts do not apply to money lent for the payment of gaming debts already incurred.

Any note, bill, or other security given in payment of money lost in gaming or betting on any game, or to secure money lent for the purpose of gaming or betting, shall be deemed

to have been given for an illegal consideration (Gaming Act, 1710, s. 1; Gaming Act, 1835, s. 1), which means that no holder, assignee or endorsee of such a note, bill or other security (including a cheque) can sue thereon: but now the Gaming Act, 1922, has repealed s. 2 of the Gaming Act, 1835 (which made money paid to such holder, etc., recoverable from the person to whom any such security was originally given), and payment of a betting or other gaming debt by cheque is put on precisely the same footing as payment of such debt in cash.

Money received by an agent of either party to a bet in settlement of the bet can be recovered from him at law by the person on whose behalf it has been received.

A person winning money by cheating at gaming is guilty of obtaining money by false pretences (Gaming Act, 1845, s. 17).

Any person convicted summarily of gaming in any open and public place may be punished as a rogue and a vagabond (q.v.) or, at the discretion of the justices, be fined not more than forty shillings for a first offence and not more than five pounds for any subsequent offence (Vagrancy Act Amendment Act, 1873, s. 2).

See WAGER.

Gaming-houses. Keeping a common gaming-house consists in keeping a house which a large number of persons are invited to frequent habitually for the purpose of gaming (q.v.). This is a misdemeanour at common law. The statute 33 Hen. 8, c. 9, s. 9, prohibited, under a pecuniary penalty, the maintenance of a house for unlawful games. The Disorderly Houses Act, 1751 (which was extended by the statute 58 Geo. 3, c. 70, s. 7), contained provisions directed against gaming-houses as well as other disorderly houses, but the first really effectual Act was the Gaming Act, 1845 (8 & 9 Vict. c. 109). Section 2 of that Act declares that every house or place shall be deemed a common gaming-house if kept or used for playing therein any unlawful game, or if a bank is kept there by one or more of the players exclusively of the others, or if the chances of any game played therein are not alike favourable to all the players; and s. 4 provides that any person keeping or assisting in the management of a common gaming-house shall be liable on summary conviction to a fine not exceeding £100 or, at the discretion of the justices, to imprisonment for not more than six months. The Gaming House Act, 1854, s. 4, provides that any person, being the owner or occupier or having the use of any house, room or place, who opens, keeps or uses, or permits to be opened, kept or used, the same for unlawful gaming, or any person who has the care or management of, or in any way assists in the conduct of the place or who advances money for the purpose of gaming with persons frequenting the place, shall be liable on summary conviction to a penalty not exceeding £500 or, at the discretion of the justices, to imprisonment not exceeding twelve months. The Acts of 1845 and 1854 apply to any house, including a private house or a club, but they do not apply to a private house in which, on an isolated occasion, unlawful gaming takes place between the owner and his friends.

Gang Days. An ancient synonym for rogation days (q.v.).

Gang Master. See AGRICULTURAL GANGS.

Gaol Delivery. The commission of general gaol delivery is one of the commissions given to the judges or commissioners of assize. (See ASSIZE). It authorises them to try, and (if acquitted) to deliver, *i.e.*, discharge from custody, every prisoner who shall be in gaol for some alleged crime when they arrive at the circuit town. Formerly a special writ of gaol delivery was issued for each particular prisoner, but this has long been obsolete. The commission of general gaol delivery is supplemental to the commission of oyer and terminer (q.v.), which only empowers the judges to try persons charged with treasons, felonies and misdemeanours committed within the area named in the commission, while the commission of general gaol delivery authorises the trial of every prisoner charged with any such offence, no matter where it has been committed. Persons are considered to be in gaol for this purpose although they may have been liberated on bail.

See CENTRAL CRIMINAL COURT.

Gaols. See PRISON.

Gaol Sessions. The Gaol Sessions Act, 1824, s. 1, provided that in every county having distinct commissions of the peace for separate parts of the county, "courts of gaol sessions," consisting of all the justices of the county, or of any two of them, should manage the gaols in the county. The Prison Act, 1865, s. 5 (2), declared the gaol sessions to be "a prison authority" for the purposes of that Act. All functions of the gaol sessions as regards prisons were transferred to the Secretary of State by the Prison Act, 1877, s. 5.

Garbler of Spices. The statute 1 Jac. 1, c. 19, enacted that all "spices, wares, drugs and other merchandises garbleable" (which

included a large number of such things as "senie barberies rise erius stavisaker") for sale in the City of London should be "garbled, cleansed, severed, sorted or divided" by the "garbler," who was to get certain fees; and it provided penalties for any trader who did not get his spices, etc., "garbled," that is to say, freed from impurities. This statute was repealed by the statute 6 Anne, c. 16, and the latter is still unrepealed as regards s. 3, which provides that the corporation may appoint a "garbler" by whom spices, etc., may be "garbled" if the owner so desire and pay the prescribed fees. But no "Garbler of Spices" appears in the current list of City officials.

Gardein; Gardeyn. A guardian (q.v.).

Gardein de Lestemery. In the reign of Edward III. this was the title of the official afterwards known as the warden of the stannaries (q.v.): see the statute 16 Car. 1, c. 15.

Gardens. As to larceny from gardens and malicious damage to them, see FRUIT.

As to public gardens, see OPEN SPACES.

Garnish. This was the popular description of money exacted from prisoners on their admission to gaols and bridewells. The payment of any such money, or of any fee on discharge, in the case of persons in custody on criminal charges, was prohibited by the Gaol Fees Abolition Act, 1815, which, however, declared by s. 14 that such fees were not abolished in the case of debtors' prisons.

In the old law, to garnish meant to warn: see, *e.g.*, the statute 27 Eliz. c. 3, where to garnish the heir means, as we should now put it, to serve him with notice of the proceedings.

Garnishee is a person in whose hands a debt has been attached, and an order for the attachment of debts is called a garnishee order. See ATTACHMENT, EXAMINATION, FOREIGN ATTACHMENT.

Garnishment (which is derived from the Norman-French *garnir*, to warn) seems to have originally meant any kind of notice to the opposite party in a proceeding.

Garnisture. Used in the fourteenth century as meaning a furnishing or providing.

Garrotting. Choking, so as to produce insensibility, and occasionally death, in order to facilitate robbery from the person or the commission of some other indictable offence. This is punishable under the Offences against the Person Act, 1861, s. 21. The punishment provided by that Act may now be supplemented by whipping under the Garrotters Act, 1863.

Garsummune. Used in Domesday as meaning a fine or amerciament.

Garter King-at-Arms. See HERALDS.

Garter, Order of the. This is the most ancient and the most distinguished of the orders of knighthood (q.v.). Its full title is The Most Noble Order of the Garter. It dates from 1347 or 1348. It is limited to twenty-five knights (K.G.) of whom the Prince of Wales is always one, in addition to the King, but the King has power to create additional knights, and there can be Ladies of the Garter. The total number of knights at present is about forty, of whom about one-third are reigning sovereigns or princes of Royal houses and the remaining two-thirds are English peers. The Queen Consort and the Queen Mother are the present Ladies of the Garter.

Garth. An enclosure; a yard; a weir or dam. See FISH-GARTH.

Garthman. A man who worked a fish-garth (q.v.). See the statute 17 Rich. 2, c. 9.

Gas. In theory, anyone can make gas and sell it to any other person who wants it. In practice, owing to questions in connection with the laying of pipes and many other matters, no one can supply gas except under statutory powers. It is done outside the metropolitan area either (1) by companies under special Acts which incorporate the Gasworks Clauses Acts, 1847 and 1871, or (2) by urban district councils (including town councils) under ss. 161, 162 and 163 of the Public Health Act, 1875. Within the metropolitan area public authorities have no power to supply gas: that is done by various companies under the Metropolitan Gas Acts, 1860 and 1861; part of the City of London Gas Act, 1868 (31 & 32 Vict. c. cxxv.); the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxxi.); the Metropolis Gas (Prepayment Meter) Act, 1900 (63 & 64 Vict. c. cclxxii.); and the London Gas Act, 1905 (5 Edw. 7, c. clx.); and various special Acts.

These Acts give the various "undertakers" —or bodies supplying gas—all necessary powers and regulate their relations with their customers. Amongst other things, gas was required by s. 12 of the Gasworks Clauses Act, 1871, and by s. 25 of the Metropolitan Gas Act, 1860, to be of a prescribed illuminating power: the Gas (Standard of Calorific Power) Act, 1916, empowered the Local Government Board (now the Ministry of Health) in the case of a local authority and the Board of Trade in the case of a company, to substitute a prescribed standard of calorific

power for the illuminating standard. The Gas Regulation Act, 1920, contains further provisions with regard to the calorific standard, and provides by s. 1 (7) for the ascertainment of calorific value: by s. 2 (4) the Board of Trade is empowered to make orders as to the proportion of carbon-monoxide which may be contained in gas supplied for domestic purposes; and the Board of Trade have now authorised the supply of gas containing so large a proportion of carbon-monoxide as to be much more deadly in case of inhalation than was the gas of pre-war times. See THERM.

The stealing of gas from a pipe is as much larceny as the stealing of wine from a cask. As to offences cognate to larceny of gas, see the Gasworks Clauses Act, 1847, s. 18, and the Gasworks Clauses Act, 1871, s. 15. As to other offences, see s. 19 of the Act of 1847, and ss. 21, 38 of the Act of 1871.

Gauger. An officer who measures wines and spirits for the revenue authorities. He is the "*gaugeour*" mentioned in the statute 23 Hen. 6, c. 15, and other ancient statutes.

Gavel. See GABEL. The word appears in a number of compounds, such as GAVELKIND; GAVELMAN (q.v.); ETC.

Gavelet, says Mr. Hargrave in a note to Coke on Littleton, is "a remedy or process, peculiar in denomination to Kent and London, by which the lord of the fee, when his tenant is in arrear for rent or service, may force him to pay the arrears and damages by seizing the land and holding it till payment." It is now obsolete. See STATUTUM DE GAVELETO. Compare CESSAVIT.

Gavelgeld. Said to have meant tribute or toll.

Gavelkind is the tenure by which all land in the county of Kent is presumed to be held until the contrary is proved. The tenure also occurs in other parts of England, notably the manors of Hackney and Stepney, which now form part of London. No land is now gavelkind which can be shown to have originally been held by a tenure higher than socage, such as frankalmoign or a military tenure.

Its principal incidents are (a) the partibility of the inheritance, that is, the land descends, on the death of the tenant, to all the sons of the tenant equally: in some cases the custom extends to collaterals, *e.g.*, brothers (see COPARCENER); (b) the right of the widow or widower of a deceased tenant to have half the land for dower or curtesy until a second marriage, the widower taking by the curtesy whether issue has been born of the marriage or not (see DOWER; CURTESY); (c) the right of an infant tenant to alien his land by feoffment at the age of fifteen years. (See FEOFFMENT.) Formerly, also, gavelkind lands were peculiar in being exempt from the liability to forfeiture on conviction for murder, but in this respect all other lands now stand on the same footing. In many places in Kent the freeholders are subject to customary heriots, fines and other ancient dues, and are compellable under penalty of distress to come for admittance into their tenancies.

The most remarkable incident of this tenure being the partibility of the land upon descent, the word "gavelkind" has come to be applied to many copyholds which only resemble the freehold tenure in this particular; but this use of the word is improper, and apt to lead to mistakes.

See CONSUETUDINE, ETC; DISGAVEL; SOCAGE; TENURE.

Gaveller is an officer of the Crown having the general management of the mines, pits, and quarries in the Forest of Dean and Hundred of St. Briavel's. The First Commissioner of Woods, Forests and Land Revenues is now *ex-officio* the gaveller (Dean Forest (Mines) Act, 1838, 1 & 2 Vict. c. 43, s. 13). He is empowered to appoint deputies (*ib.*); and the deputies grant gales to free miners in their proper order, accept surrenders of gales, and keep the registers required by statute. See GALE.

Gavelmannus; Gavelman. A villein who, in consideration of a money rent, had been released from the labour service by which he held of his lord.

Gavelmed. The service of meadowing the lord's hay which was rendered by some customary tenants.

Gazettes. The *London Gazette*, the *Edinburgh Gazette*, and the *Dublin Gazette*, are newspapers published weekly or bi-weekly, under the authority of the Government. They are the official organs of the Government for the purpose, not of expressing opinions or advocating measures, but of intimating appointments to public offices, and of publishing Royal Proclamations, Orders in Council, statutory rules and orders, dissolutions of partnership, proceedings in bankruptcy, and other such matters. At common law they are evidence only of Acts of State published therein: but their use as evidence is extended by many Statutes. Thus the Documentary Evidence Act, 1868, s. 2 (as amended by the Documentary Evidence Act, 1882, and the Documentary Evidence Act, 1895), makes the production of

a copy of any of the Gazettes *prima facie* evidence of such proclamations, etc., as are printed therein; an advertisement of the dissolution or of any change in the constitution of a firm is notice to all persons who had not dealt with the firm before the dissolution or change took place, if such advertisement be inserted in the Gazette published for the country in which the firm had its principal place of business (Partnership Act, 1890, s. 36); and the Bankruptcy Act, 1914, s. 137, makes a copy of the Gazette conclusive evidence of any notice published therein pursuant to that Act, or of the fact that any receiving order or any order of adjudication which is published therein had been made. A number of other statutes contain analogous provisions.

It is not possible to say, at present, how precisely the law stands now as regards the *Dublin Gazette*. For Northern Ireland there will presumably be a Gazette, which, as regards that area, will be the same in law as the *Dublin Gazette*: as regards Southern Ireland, surmise is useless.

Gebur. One of the denominations of a serf or of a semi-servile tenant in Anglo-Saxon times.

Geld. A tax, payment, tribute; see, for instance, DANEGELD. Also a pecuniary penalty: see, for instance, WERGELD.

Gemote; Mote; Moot. In pre-Conquest times this meant a meeting or assemblage, which might be of many different kinds, such as the witenagemot, the folcmote (q.v.), the shiremote, etc.

Geneath. In Anglo-Saxon times this seems to have meant one occupying a position analogous to that of the later villein.

General Average. See AVERAGE.

General Board of Health. The Public Health Act, 1848, s. 4, provided for the temporary appointment of three persons as a board (to be called "the General Board of Health") for the purpose of administering that Act. The Local Government Board Act, 1871, s. 2, Sch. (Pt. I.), transferred the functions of the board to the Local Government Board (q.v.) from the Privy Council, in which, by the statute 21 & 22 Vict. c. 97, some of them had been vested when the statutory authority for the existence of the General Board of Health expired in 1858, and from the Home Secretary, upon whom others of them had devolved.

General Council. For the purposes of the Medical Acts, this expression means "The General Council of Medical Education and Registration of the United Kingdom" (Medical Act, 1858, s. 3), which consists of five persons nominated by the Crown, more than twenty nominated by the universities and the various duly constituted medical and surgical bodies in the United Kingdom, and five elected by registered medical practitioners in the United Kingdom: see the Medical Act, 1886 (49 & 50 Vict. c. 48) s. 7, and the Acts relating to various universities founded since 1886. It exercises, amongst other functions, disciplinary powers with regard to medical practitioners, and also with regard to dentists (q.v.) and apothecaries (q.v.), analogous to those possessed by, for instance, the Benchers of the Inns of Court with regard to barristers and by the Law Society with regard to solicitors. See INFAMOUS CONDUCT.

General Council of the Bar. See BAR COUNCIL.

— **Generale dictum generaliter est intelligendum** (2 *Inst.* 81; 11 *Rep.* 59). (A general *dictum* (q.v.) is to be understood in a general sense).

— **Generale nihil certi implicat** (2 *Rep.* 34). —A general statement means nothing definite.

— **Generale nihil ponit** (2 *Rep.* 34). (A general statement is worthless.)

— **Generale tantum valet in generalibus quantum singulare in singulis** (11 *Rep.* 59*b*). (When words are general they are to be taken in a general sense, just as words relating to a particular thing, are to be taken as referring only to that thing.) This maxim is appended by Coke to the maxim QUI OMNE DICIT, ETC.

General Exceptions. Every definition of a crime is subject to certain exceptions which apply to every case in which there exist the facts stated or implied in the exception. Such exceptions are:—insanity; the fact that the person who did the act constituting the alleged crime was under seven or is under fourteen and unable to know that the act was wrong; drunkenness precluding the existence of such specific intention as is necessary to constitute the alleged crime; compulsion; and various others. Such exceptions are known as general exceptions.

General Health Acts. A popular title formerly applied to the Public Health Acts, 1848 and 1872, both of which were repealed by the Public Health Act, 1875, s. 343.

— **Generalia specialibus non derogant** (*Jenk. Cent.* 120). (General things do not derogate from special things.) Thus specific enactments are not affected by subsequent general enactments unless the earlier enactment is inconsistent with the latter enactment, or unless there be some express reference in the

later enactment to the earlier enactment—in either of which cases the maxim LEGES POSTERIORES, ETC., applies.

Generalia verba sunt generaliter intelligenda (3 *Inst.* 76). (General words are to be understood generally.) But see VERBA GENERALIA, ETC.

Generalibus specialia derogant (*Halk.* 51). (Special things derogate from general.) This is the converse of GENERALIA SPECIALIBUS, ETC.

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa (8 *Co.* 154). (A general clause does not extend to those things which are included in previous special words.)

Generalis regula generaliter est intelligenda (6 *Rep.* 65). (A general rule is to be understood generally.) Compare GENERALE DICTUM, ETC.

General Issue. See ISSUE.

General Legacy. See LEGACY.

General Lighthouse Fund. See MERCANTILE MARINE FUND.

General Limits. For the purposes of the Metropolitan Streets Act, 1867 (which is the principal Act regulating traffic in London) this expression means all parts of the Metropolis within a radius of six miles of Charing Cross (Metropolitan Streets Act, 1885). These are the limits within which s. 7 of the Act of 1867 (prohibiting the driving of cattle during certain hours), s. 8 (metropolitan stage-carriages to take up or set down only on near side of roadway) and s. 9 (advertisements to be carried or distributed only as the police approve) have operation. Compare SPECIAL LIMITS.

General Meeting. See MEETING.

General Sessions is a Court of record held by two or more justices of the peace for the execution of the authority given them by the commission of the peace and certain statutes. General sessions held at certain times in the four quarters of the year pursuant to the statutes 36 Edw. 3, st. 1, c. 12, 12 Rich. 2, c. 10, and 2 Hen. 5, st. 1, c. 4, are properly called quarter sessions (q.v.), but intermediate general sessions may also be held. General sessions other than quarter sessions are now held only in London and Middlesex; special enactments apply to those places. See MIDDLESEX.

General Ship. Where the master and owners of a ship engage with separate merchants to convey their goods to the place of her destination, the contract is said to be for conveyance in a general ship, as opposed to a chartered ship, that is, a ship which is let to one or more persons under one contract of affreightment, called a charterparty (q.v.). In the case of a general ship, the contract with each freighter generally takes the form of a bill of lading (q.v.).

A shipowner who professes to carry the goods of all persons who apply to him, so long as he has room in his ship, is a common carrier (q.v.).

General Tail. See ESTATE TAIL.

General Warrant. A general warrant was a warrant issued by the Secretary of State for the arrest of such persons as were, for instance, the authors of a seditious libel. No persons were named in such a warrant, and such a warrant left it to the person entrusted with the warrant to decide who it was that should be arrested. No such warrant was ever authorised by statute, and in 1765 such warrants were decided to be illegal at common law. See ASSISTANCE, WRIT OF.

General Words: In conveyances, mortgages and many other assurances of corporeal hereditaments, numerous words descriptive not only of every kind of easement, privilege or appurtenance, supposed to be capable of belonging to the property assured, but also of portions of the soil, fixtures and produce of the land (as timber) were, up to 1882, added to the parcels or description of the property, and are called the "general words." They were useful when there were any easements or privileges reputed to belong to the property, although not legally appurtenant to it, as they would not have passed with the property unless expressly mentioned. But with this exception the "general words" were as a rule unnecessary verbiage. They are now always omitted, because everything which they could have done, even as regards easements, is now done by force of the Conveyancing, etc., Act, 1881, s. 6. See ALL THE ESTATE; OPERATIVE PART; PARCELS.

Geneva Arbitration. See ALABAMA CASE.

Geneva Convention. This was an international agreement entered into at Geneva in 1864 for the purpose of ameliorating the condition of sick and wounded soldiers in war. It was superseded by the Geneva Convention of 1906. It is under these conventions, which were accepted by practically every Government, that the "Red Cross" has been used. By the Hague Conference (q.v.) of 1899 the Geneva Convention was extended to naval warfare.

Geneva Convention Act, 1911. This statute prohibits the use of the "Red Cross" (a red cross on a white ground) or of the words

"Red Cross" or "Geneva Convention" for commercial purposes, except by the leave of the Army Council.

Gentili. Alberico Gentili (Albericus Gentilis) was born the 14th January, 1552, in Ancona, took the degree of doctor at Perugia in 1572, became professor of law at Oxford in 1587, and died there in 1611. He wrote *De juris interpretibus dialogi sex*, Lond. 1582; *De Legationibus*, 1583; *De jure belli libri III.*, Lugd. Bat. 1589; *Comment. secunda de jure belli*, 1589; *Opera omnia*, Neap. 1770. Professor Holland published a new edition of the *De jure belli libri tres* (Clarendon Press, 1877).

Gentleman; Gentlewoman. When a man of independent means is not entitled to the affix "esquire" and is of no occupation, he is usually described in legal documents as "gentleman:" but no precise meaning in the law can be attached either to that word or to the word "gentlewoman." The latter word is not used in legal documents to describe even a woman of respectable social position who has no particular occupation. If unmarried, she is described as "spinster"; if a widow, she is described as "widow"; and if married, she is described as "wife of A. B."

George Noble. See GOLD COINS.

Gersuma; Gersoma = Garsummune (q.v.).

Gersumarius. A villein who, when he gave his daughter in marriage, had to pay a fine to the lord.

Gesith. This meant one of the upper classes in Anglo-Saxon times.

Gestation. The period of gestation is that time which elapses between the conception and birth of a child. It is usually about nine months of thirty days each; but may be shorter or longer. The time is added, where necessary, to the period allowed under the rule against perpetuities: for example, if an estate is limited to A. for life, with remainder to his eldest son on attaining twenty-one, and A. dies leaving his widow pregnant with a son, but without any other issue, the remainder to the son takes effect on his birth. See VENTRE INSPICIENDO, DE.

Gestu et Fama, De. A writ, obsolete and replaced by other process even when Lambard wrote in 1581, which lay to the King's Bench on behalf of persons imprisoned on suspicion of felony *de gestu et fama* (because of their demeanour and general reputation) who sought to be set free before "the coming of the Justices of Gaol Delivery." See Lambard's *Eirenarcha*, Bk. 4, c. 14.

Gift; Give, are words of wide signification, and import the transferring of property from one to another, especially when it is done without recompense, as opposed to a sale or barter. A gift by will is either a devise or a bequest (q.v.). Some writers speak of a gift in law, or gift by act of law: thus, when a woman was married to a husband before 1st January, 1883 (the date of the commencement of the Married Women's Property Act, 1882 (q.v.)), this operated as a gift in law of all her goods to him.

As an operative word in conveyancing, "give" was always held to be as wide as "grant" (q.v.), and now the Conveyancing Act, 1881, s. 49, gives statutory sanction to this view; but as a matter of fact "grant" is still always used. It was formerly the technical and proper word in a feoffment (q.v.), and created an implied warranty of title, now abolished by the Real Property Act, 1845, s. 3.

"Gift" in the old writers frequently means a conveyance of land in tail. See DE DONIS; DONEE; DONOR.

"Gift" is also applied to benefices or livings. Thus, if an advowson belongs to A., the living is said to be in A.'s gift.

In popular language, a voluntary conveyance or assignment is called a deed of gift.

See DONATIO INTER VIVOS; DONATIO MORTIS CAUSA.

Gilbert Acts. The Clergy Residences Repair Act, 1776, the Clergy Residences Repair Act, 1780, the Clergy Residence Act, 1826, the Parsonages Act, 1838, the Parsonages (Amendment) Act, 1838, the Parsonages Act, 1865, and the Incumbents and Benefices Loans Extension Act, 1881 (all of which aim at the provision of proper residences for the clergy), are popularly known as the Gilbert Acts. The name is more particularly applied to the Act of 1776, which was introduced by Mr. Thomas Gilbert, member for Lichfield.

The repealed statute 22 Geo. 3, c. 83, relating to the relief of the poor, was also introduced by Mr. Gilbert and was popularly known as the Gilbert Act.

Gilda mercatoria. A guild merchant. The *gilda mercatoria*, as known to English law, was the royal grant to merchants of a town of the exclusive right of trading therein and of levying tolls upon outsiders desirous of trade facilities. It was unknown in London and some of the other more important towns: elsewhere it was, down to the fifteenth century, a predominating factor in municipal life.

Gild-rents. Rents formerly receivable by gilds (q.v.) of the religious description.

Gilds. From soon after the Norman Conquest there existed in English towns and cities

voluntary associations known as gilds or guilds which were formed for (1) religious and benevolent or (2) economic purposes. The first class of gilds performed a number of functions in connection with what would be now called health insurance, old-age pensions, fire and marine insurance, and even burglary insurance. They were, in fact, friendly societies of a most useful kind. But with these functions there were others of a spiritual character, such as the provision of lights for altars and of masses for the dead: and during the course of the Reformation they ceased to exist. The gilds which existed for economic purposes were the trade gilds and the craft guilds. The various kinds are well illustrated in the list of City guilds given in *Whitaker's Almanac*; as to them see COMPANIES, CITY. Outside the City of London the trade and craft gilds (which consisted exclusively of masters) did not form the governing body of the town or city; but they had many privileges, which, however, fell into desuetude as the modern economic system grew up in the sixteenth century.

Gill. This measure is not known to the law. It is a customary measure of capacity, generally understood to be one-fourth part of a pint (q.v.).

Gin Act. The popular title of the repealed statute 9 Geo. 2, c. 23.

Gippewyz, Le Domesday de. The more accurate title of the Domesday of Ipswich (q.v.).

Gipsy. See EGYPTIANS.

Gisement. Formerly this meant cattle taken in by an agister (q.v.) or the money received by him for taking them.

Gisetaker. An old synonym for agister (q.v.)

Gistment. An old equivalent for agistment (q.v.).

Giving Time. Where a creditor enters into a binding contract to permit his debtor to defer the payment of money or the doing of an act beyond the date upon which it was originally agreed the money should be paid or the act done, then the creditor is said to "give time," and such giving of time, if made without the consent of any person who has guaranteed the debtor, discharges the guarantor unless the guarantor had originally agreed that the giving of time should not operate as a discharge. And so such giving of time by the holder to the acceptor of a bill of exchange discharges any drawer or endorsee of the bill.

Glanders (or **Farcy**). A disease of horses, communicable to human beings, and invariably fatal to both the one or the other. It is at common law a nuisance punishable on indictment, to bring a glandered horse into any public place.

The Board of Agriculture and Fisheries, in exercise of the power given to them by the Diseases of Animals Act, 1894, s. 22 (xxv., xxvi.), extended the definition of disease under that Act so as to include glanders or farcy. That Order was revoked and replaced by the Glanders or Farcy Order of 1907, under which (s. 13) a local authority may with the consent of the owner slaughter horses, asses, or mules suspected of having glanders (if the owner objects, they cannot do this without the authority of the Board). And (see s. 23) a number of acts or omissions in relation to glandered animals are made punishable as offences under the Act of 1894. If any servant or workman having the care, or handling the carcase, of any glandered horse, etc., contracts glanders he is deemed to have suffered personal injury by accident for the purposes of the Workmen's Compensation Act, 1906; see s. 8 (1), Sch. III.

Glanville. The work called *Tractatus de Legibus et Consuetudinibus Angliæ* is generally attributed to Ranulph de Glanville, who was sheriff, justice itinerant, and afterwards chief justiciary under Henry II. He died at Acre, on an expedition to the Holy Land in 1190.

Glassman. A wandering dealer in glassware. The statute 39 Eliz. c. 4, s. 15, provided that duly licensed glassmen who did not beg should be exempt from the provisions of that statute for the "punishment of rogues, vagabonds, and sturdy beggars": but the statute 1 Jac. 1, c. 7, s. 2, provided without qualification that every glassman should be deemed a rogue and a vagabond for the purposes of the Act of Elizabeth.

Glebæ ascriptitii. The description anciently applied to villeins who could not be removed from their holdings provided they performed the prescribed service, but who on the other hand went with the land as part of its equipment. See VILLEINAGE.

Glebe in ecclesiastical law is a portion of land attached to a benefice as part of its endowment.

Gliscywa. A fraternity or association (*Leg. Athel.* c. 12).

Gloucester King-at-Arms. See HERALDS.

Gloucester, Statute of. This is the statute 6 Edw. 1, c. 1.

Glove Money; Glove Silver. Payments

made formerly by the sheriff to the clerk of assize and the judge's officers at the end of an assize from which no convicts were left for execution.

Gloves. At maiden (q.v.) assizes or sessions it is the custom for the sheriff, whenever there are no prisoners for trial, to present a pair of white gloves to the judge sitting for criminal business.

God-bote. Anciently this meant a fine for some offence against God.

God-gild. In Anglo-Saxon times this meant any offering for the service of God.

Godparents. Under the Poor Law Amendment Act, 1866, s. 14, and the Poor Law Amendment Act, 1868, s. 23, the godparent of any child (not belonging to the Church of England) in a workhouse or district school may, in default of relatives, apply to the Ministry of Health for the removal of the child to a school of the child's religion.

As to "advancement" by a godparent, see that heading.

God's Penny. The English form of *denarius Dei* (q.v.).

Going through the Bar. Before the Judicature Acts, the Chief Justice (or the Chief Baron) of each of the common law Courts used, at the sitting of the Court on all days other than Special Paper Days and other days on which motions were not taken, to ask, in order of seniority, each barrister who was in Court whether he had anything to move. This was called "going through the bar."

Going to the Country. See GO TO THE COUNTRY.

Gold Coins, Ancient. Some of the Anglo-Saxon kings appear to have issued gold coins, but none of these were in regular currency and nothing definite is known of them. The first gold coin after the Conquest was the gold penny of Henry 3, issued in 1257 and containing 45 1-5th grains of pure gold. The present sovereign weighs 123 grains, of which eleven-twelfths are pure gold. The value of the gold penny of 1257 was fixed by proclamation originally at twenty pence and subsequently in 1270 at twenty-four pence. It was never in general circulation, silver coins being sufficient for most purposes in view of the low prices of commodities.

The noble (138 grains), which was worth six shillings and eightpence, the half-noble, which was worth three shillings and fourpence, and the farthing of gold (or quarter-noble), which was worth twenty pence, were gold coins current in the fourteenth and fifteenth centuries. All three are mentioned in the statute 9 Hen. 5, c. 7. They were first coined in 1344, and no gold had been coined in the interval from 1257. In 1466 the noble had become the rose-noble or rial (120 grains), there being also half-rials and quarter-rials, the values being respectively ten shillings, five shillings, and two-and-six; and the angel (80 grains) and angelet, value respectively for six shillings and eightpence and for three shillings and fourpence, appeared in the same year. The George-noble (71 grains) of 1527 was of the same value as the angel of 1466; and the values of the angel (80 grains) and angelet coined in 1542 were declared to be increased to eight shillings and four shillings respectively, there being also a quarter-angel of that year worth two shillings. In 1553 rials (120 grains) worth fifteen shillings, angels (80 grains) worth ten shillings, and angelets worth five shillings were issued. Rose-rials (213 grains) worth thirty shillings, and the spur-rial (106 grains) worth fifteen shillings, were issued in 1607: and in 1621 the values of the rose-rial, spur-rial, angel and angelet were increased by royal proclamation to thirty-three shillings, sixteen shillings and sixpence, eleven shillings, and five shillings and sixpence respectively. None of the above-mentioned coins were minted after the reign of Charles I. The noble, which began at 138 grains and went as low at one time as 106 grains, corresponded more or less to the modern sovereign in weight: the rial also was of almost precisely the same weight as the modern sovereign, its weight throughout being 120 grains.

Down to 1490 the only gold currency consisted of the noble, the rial, the angel, and the smaller coins of similar names, such as the half-noble, etc. The sovereign appeared in 1490 with a weight of 240 grains, which by 1605 had come down to 154 grains: at the latter weight the coin was current for twenty shillings or one pound. See SILVER COINS.

Concurrently with the first nobles, Edward III. issued florins (108 grains), half-florins, and quarter-florins, worth respectively six shillings, three shillings, and eighteen pence. The florin did not again appear until 1849, when the familiar silver florin was first issued.

There were issued from 1527 to 1662, crowns, worth approximately one-fourth of a sovereign, half-crowns, worth approximately one-eighth of a sovereign, and also half-sovereigns, the weights of these coins varying with that of the sovereign. A variant of the half-sovereign was the double-crown; the sovereign itself was to some extent replaced

during the reigns of James I. and Charles I. by the unite or laurel (current in Scotland as well as in England) which began at 154 grains and ended at 140 grains, the latter weight being also that of the twenty-shilling pieces, or broads, issued during the Protectorate and by Cromwell and during 1660-1662. Between 1662 and 1817 there was no gold coin minted of the value of twenty shillings, nothing being coined except, generally, guineas (129 grains) and half-guineas, and occasionally quarter-guineas and one-third guineas (or seven-shilling pieces), and two-guinea and five-guinea pieces.

The gold penny of 1257 contained only pure gold; the coinage from 1344 to 1527 contained only one part of alloy to 192 parts of gold; between 1527 and 1649 the standard of fineness varied considerably, the modern standard of eleven parts of gold to one part of alloy being the most common, although some issues between 1544 and 1546 contained as much as one-sixth of alloy, while others were of the standard which had existed before 1527: and since 1649 the standard of eleven parts of gold to one of alloy has been steadily adhered to.

The coins forming at various periods the gold coinage of the country were never mentioned for legal and business purposes, in connection with which the measures of money were the pound, the mark, the shilling and the penny. See SILVER COINS, ANCIENT.

See also SALUTE.

Good Behaviour. See SURETIES OF THE PEACE AND GOOD BEHAVIOUR.

Good Consideration. See CONSIDERATION.

Good Friday. The Friday immediately preceding Easter Sunday. See CHRISTMAS DAY.

Good Jury. A judge might, upon a writ of inquiry, or for the trial of issues in lunacy, order that the matter be tried by a "good jury." This was interpreted as meaning a special (q.v.) jury.

Goods, said Coke, "includes all chattels, as well reall as personall." In practice, however, the term "goods" is confined to those chattels which are capable of manual delivery, such as furniture and merchandise. Assignments of goods, by way of sale or mortgage, are subject to various statutory regulations, as to which see BILL OF SALE; STATUTE OF FRAUDS. The two words "goods and chattels" are generally used together, to denote personal property, especially in the old books, and in old forms which have survived: thus, writs of execution against personal property refer to it as the "goods and chattels" of the judgment debtor. In writs of *fieri facias*, the term "goods and chattels" includes not only furniture, cattle, merchandise, etc., but also money, bank notes, bills of exchange, bonds and other securities for money (Judgments Act, 1838, s. 12), and leaseholds or other chattel interests in land: the wearing apparel, bedding and implements of trade of a judgment debtor (not exceeding in value £5) cannot be seized (Small Debts Act, 1845, s. 8). See CHATTELS; CHOSE; EXECUTION; GROWING CROPS; PERSONAL PROPERTY.

Goods Bargained and Sold. One of the *indebitatus* counts (q.v.) used in the old action of *assumpsit* (q.v.) was for "goods bargained and sold," that is to say, for goods sold but not delivered. It was applicable where the property in the goods had, without delivery, passed to the purchaser and the price was payable under the contract. In a similar case now the writ may be specially endorsed under R. S. C. Ord. 3, r. 6, so as to ground an application for final judgment; Ord. 14, r. 1.

Goods Sold and Delivered. This, like the count for "goods bargained and sold," was one of the *indebitatus* counts in the action of *assumpsit*. It applied where the goods sold had been delivered and the price of them was due. In a like case the writ may now be specially endorsed under Ord. 3, r. 6.

Goodwill. The goodwill of a business is the benefit which arises from its having been carried on for some time in a particular house, or by a particular person or firm, or from the use of a particular trade mark or trade name (q.v.). Its value consists in the probability that the old customers will continue to be customers notwithstanding a change in the firm or place of business. It is personal property.

A goodwill is said to be personal when it depends on the personal character, that is, the skill or reputation of the person who carries it on. In the case of a public-house, baker's shop or the like, the goodwill is not personal, because it consists in the habit which the customers have of resorting to the house. Therefore, if a baker or publican mortgages his house of business without mentioning the goodwill, and the mortgagee sells the house as a going concern, thus obtaining the benefit of the goodwill, the mortgagor is not entitled to that part of the purchase-money which represents the value of the goodwill.

Questions of goodwill chiefly arise between an assignor and an assignee. An assignment of a goodwill implies a recommendation of the

assignee by the assignor to his customers, and an agreement by him to abstain from all competition with the assignee. If A. carries on business under a firm name which is wholly or partially artificial (such as "A & Z." or "A. & Co."), and assigns the goodwill of his business to B., then B. becomes entitled to the exclusive use of the firm name as against A., and against all the world, so that A. can neither complain of B.'s use of the name, nor use any name so resembling it as to be calculated to represent to the world that he (A.) is carrying on the business which he assigned to B. On the same principle, A. is not allowed to solicit old customers of the business to deal with him, although he may deal with them, if they come to him without solicitation.

In the law of real property, where copyholds are granted for the lives of several persons, the first-named life, or the first taker as he is called (that is, the first-named *cestui que vie*), is generally, though not invariably, the beneficial owner. By the special customs of a great number of manors, the first taker has the right to surrender his estate, and thereby to bar all the rest. And it is frequently part of the custom that the life in possession, or the first of the lives in possession, shall have a veto upon any fresh creation of tenancies in remainder, without his assent or "goodwill," for the manifesting of which there is frequently a customary ceremony, the object being to preserve to the beneficial owner the power of surrendering to the lord and taking a new estate for his own benefit.

Goole. Used in the statute 16 & 17 Car. 2, c. 11, s. 7 (which dealt with sea-walls) as meaning an outlet: "*if any goole . . . breach . . . or overflowings . . . shall . . . happen . . . through any of the . . . bancks.*"

Gorce; Gors; Gore. Anciently these words meant a weir, pool, or mill-dam. See the statutes 14 & 15 Hen. 8, c. 13, s. 2; and 23 Hen. 8, c. 5, s. 1.

Gote; Goote. A sluice. See the statutes mentioned under GORCE.

Go to the Country. Before the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), when a defendant concluded his pleading with the words "and of this he puts himself upon the country," he was said to "go to the country," that is to say, to require a trial by a jury. The corresponding form for a plaintiff was "And this the plaintiff prays may be enquired of by the country." See COUNTRY; VERIFICATION.

Governor. This, unless a contrary intention appears, means, in every Act passed after 31st December, 1889, as regards Canada or India, the Governor-General, or the person for the time being having his powers, and, as regards any other British possession, the person for the time being administering the government thereof (Interpretation Act, 1889, ss. 18 (6), 42).

Governors of the Chest at Chatham. Officers formerly appointed to relieve poor and maimed seamen. See the statute 22 & 23 Car. 2, c. 23, s. 4.

Go Without Day. When a proceeding was dismissed the plaintiff was formerly said to go without day, that is to say, the case was not adjourned to any future day. See EAT SINE.

Grace. An Act of Parliament giving a general and free pardon was formerly known as an Act of Grace: see, for instance, the statute 7 Geo. 1, c. 29, which, however, excepted certain crimes and did not apply to persons then in the service of the Pretender. As practically all serious crimes were capital felonies down to a century ago, an act of grace was of little avail to those who had been convicted of such crimes: they were beyond either pardon or punishment. Grace also meant a dispensation or special permission: see the statute 1 & 2 Ph. & M. c. 8, s. 33.

See DAYS OF GRACE.

Graffer. Anciently this meant a notary; see the preamble to the statute 5 Hen. 8, c. 1.

Graffium. Mediæval Latin for a cartulary or register of deeds.

Grain. One-seven-thousandth part of the imperial standard pound (Weights and Measures Act, 1878, s. 14).

Grainage. Formerly one-twentieth part of all salt imported by aliens into the City of London was taken by the corporation: this was known anciently as granage and subsequently as grainage.

Grammar Schools. A grammar school is defined by the Grammar Schools Act, 1840, s. 25, in words which substantially mean that it is an endowed school for instruction in Latin and Greek. Almost all grammar schools are "endowed schools" (q.v.) for the purposes of the Endowed Schools Acts; and the various bodies which have been entrusted with the administration of those Acts have had power since 1869 to reorganise the system of education in grammar schools. See s. 9 of the Endowed Schools Act, 1869.

Granage. See GRAINAGE.

Grand Assize. See ASSIZE, GRAND.

Grand Cape. See CAPE.

Grand Coustumier du Pays et Duchè de Normandie, Le. This is a collection of the

ancient laws and customs of the Duchy of Normandy as they existed before the year 1205, when the English king lost the whole of the duchy except the Channel Islands: and to this have been added a number of the ordinances of the French kings who reigned before 1205. This collection was the basis of the law of Jersey. In Guernsey (see APPROBATION DES LOIS; PRECEPTE D'ASSIZE) it had never the same authority as in Jersey.

The *Coustumier* has been printed many times. One of the most important editions is that printed at Rouen in 1539. The best modern edition is de Gruchy's "*Ancienne Coutume de Normandie*"—the *Grand Coustumier* and the *Ancienne Coutume* are identical—published at St. Helier in 1881.

Grand Days. One day in each term (q.v.) was formerly known as Grand Day. The Grand Days were: Candlemas Day (February 2nd), in Hilary Term; Ascension Day (March 25th), in Easter Term; St. John Baptist Day (June 24th), in Trinity Term; and All Saints' Day (November 1st), in Michaelmas Term. Each of these days was a *dies non* for the Courts, and was kept with much ceremony in the Inns of Court and Chancery. Now the Courts do not concern themselves with Terms or with Grand Days (see SITTINGS): the Inns of Chancery have passed away; and even in the Inns of Court Grand Day is merely one day—it may be any day—in each of the four terms on which guests are entertained at dinner by the benchers (q.v.), and a dinner somewhat more elaborate than usual is provided for the other members of the Inn.

Grand Distress. Formerly this meant distress which extended to all the goods and chattels which the party to be distrained upon had within the county. The process is now obsolete. It was exercised under the writ of grand distress, which issued in the action of *quare impedit* if the defendant failed to appear or if, after having appeared, he made default: and the action of *quare impedit* (q.v.) has been abolished.

Grand Jury. See JURY.

Grand Serjeanty. "Tenure by grand serjeanty," says Littleton, "is where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his army, or to be his marshall, or to carry his sword before him at his coronation, or to be his server at his coronation, or his carver, or his butler, or to be one of his chamberlaines at the receipt of his exchequer, or to do other like services, &c. And the cause why this service is called grand serjeanty is for that it is a greater and more worthy service than the service in the tenure of escuage." The services incident to grand serjeanty were known as honorary services.

The tenure by grand serjeanty still continues, though it is no longer a tenure by knight's service, the statute 12 Car. 2, c. 24, having converted it into free and common socage, merely preserving the honorary services incident to it.

See CORNAGE; KNIGHT'S SERVICE; PETTY SERJEANTY; SERJEANT; TENURE.

Grant.—I. "This word" says Sheppard in his *Touchstone*, "is taken largely where anything is granted or passed from one [the grantor] to another [the grantee]. And in this sense it doth comprehend feoffments, bargains and sales, gifts, leases, charges, and the like; for he that doth give or sell doth grant also. . . . And so some grants are of the land or soil itself; and some are of some profit to be taken out of or from the soil, as rent, common, &c. And some are of goods and chattels; and some are of other things, as authorities, elections, &c." But though "grant" was always an operative word of the most general effect and extent, it is especially used in the following cases:—

(1) It always was and is still the appropriate word for the conveyance, *inter vivos*, of incorporeal hereditaments (such as commons, easements, etc.), remainders, reversions, and generally of freehold estates not lying in livery, and consequently not the subject of livery of seisin and feoffment. See LIVERY.

(2) By the Real Property Act, 1845, s. 2, all corporeal hereditaments, as regards the conveyance of the immediate freehold thereof, are deemed to lie in grant as well as in livery, so that "grant" is now not only the sufficient, but the proper, technical word of conveyance of every freehold estate, and a simple deed of grant has superseded the old-fashioned feoffments, leases and releases, etc., which were formerly required to convey freehold estates in possession. (See CONVEYANCE; FEOFFMENT; LEASE AND RELEASE.) The word "grant," although always used, is not absolutely necessary in a deed of grant, for other words indicating an intention to grant will answer the purpose. See the Conveyancing Act, 1881, s. 49, and GIVE.

"Grant" is applied to copyhold lands to signify that the lord accepts a person as tenant

of the land by copy of court roll. An ordinary grant takes place where the lord admits a tenant in pursuance of a surrender by the preceding tenant, or on his death. A voluntary grant is where copyhold land is "in hand," *i.e.*, is in the possession of the lord free from the rights of any tenant, and the lord regrants the land to be held by copy of court roll.

II. "Grant" is the term commonly applied to rights created or transferred by the Crown, *e.g.*, grants of pensions, patents, charters, franchises.

III. A grant of probate or letters of administration is made when probate or administration is issued from the proper Court. A grant is said to be general when it is unrestricted, and limited when it is confined to a part of the deceased's property, or to a period of time, or to a particular object. If an executor or administrator dies or becomes incapable to act before he has administered the estate, the Court will appoint a new representative by granting probate or letters of administration (as the case may be) *de bonis non* [*administratis*], "of the goods not administered," so that the new representative may complete the administration. Probate *de bonis non* is granted in the case of a deceased executor only where such executor dies either intestate or after having made a will of which he appoints no executor even though in his will he may mistakenly have appointed a person to be executor of the will of the original testator: see EXECUTOR.

Grants limited in time:—The commonest instances are—grants of probate limited to the life or widowhood of the executor or executrix; grants of administration—(a) "till a will be found," where the will has been lost since the death of the testator; (b) *durante minoritate, absentiâ* or *dementiâ*, "during the minority," "absence" or "insanity" of the executor or person entitled to a general grant of administration, hence sometimes called "grants for the use and benefit *jus habentium*" that is, for the benefit of persons "having a right" to a grant (see *Guardian*); (c) *pendente lite*, where a suit touching the validity of the will of the deceased is pending. When the time of a limited grant has expired, the person entitled may apply for a general and regular grant; this is called a supplemental or *cessate* grant.

Grants limited to a particular object:—The commonest instances are: (a) grants of administration *pendente litem* or *ad litem*, limited to the purpose of commencing, carrying on, or defending proceedings, involving a certain part of the deceased's estate; (b) grants of administration *ad colligenda bona* [*defuncti*], "to collect the goods [of the deceased]," where the estate is of a perishable or precarious nature, and regular probate or administration cannot be granted at once; (c) grants *cæterorum* [*bonorum*], "of the rest [of the goods]," where a grant limited to part of the estate, or to a particular purpose, has already been granted. A grant "save and except" is the reverse of a *cæterorum* grant.

See LOST GRANT.

Grass-week, "rogation week, so called in the Inns of Court and Chancery because the commons of that week consist chiefly of sallets, with hard eggs, green sauce, etc." (Phillips, ed. Kersey.)

Great Council (Great Council of the Realm; Concilium Magnum Regni). This was the assembly, consisting of the tenants in chief and the great ecclesiastics, which after the Conquest, represented the Anglo-Saxon Witenagemot (q.v.). The House of Lords originated out of it. After the House of Lords had been constituted, the name was applied to occasional assemblies of the peers meeting otherwise than in Parliament. The last Great Council was held by Charles I. at York in 1640: and Clarendon states that no such council had been held for centuries.

Great Roll, The. The Pipe (q.v.) or Pipe Roll.

Great Seal. By the Union with Scotland Act, 1706, it is provided that there shall be one Great Seal for the United Kingdom, to be used for sealing writs to elect and summon the Parliament, and for sealing all treaties with foreign States, and all public acts, instruments and orders of State which concern the whole United Kingdom, and in all other matters relating to England, as the Great Seal of England was used before the union.

Except in a few cases where the *fiat* of the Lord Chancellor or other authority is sufficient, the authority required for the use of the Great Seal is a warrant under the sign manual (q.v.) countersigned by the Lord Chancellor, a Secretary of State, or two of the Commissioners of the Treasury (Great Seal Act, 1884, s. 2).

The office of Lord Chancellor is created by delivery of the Great Seal. See CHANCELLOR.

The Great Seal was formerly required on charters, grants of office, pensions and annuities, licences of denization, licences for theatres and certain other licences: but the Crown Office Act, 1877, enacted that a simple and easily-affixed seal, known as the wafer great seal could be used in all cases instead

of the Great Seal; and the Great Seal is now used mainly on the patents of peers and of judges of the High Court. Letters patent for inventions formerly also required the Great Seal; but they are now issued by the Patent Office, and are sealed with the seal of that office. See PATENTS.

See CLERK OF THE CROWN IN CHANCERY; PATENT OFFICE; SEAL.

Green Cloth. See BOARD OF GREEN CLOTH.

Greenhue; Greenhew. The same as *vert* (q.v.).

Greenland Company. A sum of £40,000 having been subscribed by various persons for the purpose of carrying on the Greenland whale fishery, the statute 4 Will. & Mar., c. 17, gave those persons power to form "a joint stock" of £40,000, and incorporated the stockholders, under the name of the Greenland Company with power to engage in the Greenland trade. But this Act gave the company no exclusive right to trade, and the statute 1 Ann, c. 10, expressly enacted that all British ships should have the same right to trade to Greenland as the Greenland Company. The statute-book does not disclose the subsequent history of the company.

Green Silver. A customary payment of one halfpenny made by tenants of the Manor of Writtle in Essex, whose front doors opened on a village green known as Greenbury.

Green Wax. This, says Jacob, "is where estreats are delivered to the sheriffs out of the Exchequer, under the Seal of that Court, made in Green Wax, to be levied in the several counties." As to earlier times, see the statutes 43 Edw. 3, c. 9, and 7 Hen. 4, c. 3.

The official in charge of the office was known as the Surveyor of Green Wax (*Commons Committees' Reports* (1803), Vol. 13, p. 314). In 1798 he drew about £250 a year, in return for which he did nothing except pay about £60 a year for a deputy, etc.; and the deputy seems also to have had little to do (*ib.*).

Greenwich Hospital. This was founded in 1694 for the relief of disabled seamen of the Royal Navy. William and Mary gave the first endowments, and these were increased during reigns of Anne and of the first two Georges. hospital has been the subject of much ılation. The Acts regulating it at present he Greenwich Hospital Acts, 1868 to 1895.

reenwich Time. "Whenever any expres- of time occurs in any act of parliament deed or other legal instrument the time referred to shall, unless it is otherwise specifically stated, be Greenwich mean time (Statutes (Definition of Time) Act, 1880, s. 1, as amended by the Time (Ireland) Act, 1916). The Act of 1880 had originally provided that "time" should mean, as regards Great Britain, Greenwich mean time, and, as regards Ireland, Dublin mean time.

Green Yard. In the metropolitan area this is, as regards stray animals, the equivalent for a pound (q.v.). See the statute 57 Geo. 3, c. xxix, s. 109.

Greffier. In the Channel Islands this means a clerk or notary, or an official of the Courts.

Grenville Act. The popular title of the statute 10 Geo. 3, c. 16, which transferred the trial of parliamentary election petitions from the House of Commons, as a whole, to special committees. It was repealed by the statute 9 Geo. 4, c. 22, s. 1.

See ELECTION PETITIONS.

Gretna Green. After the enactment of Lord Hardwicke's Act (see MARRIAGE) it was impossible to contract a valid marriage in England without either banns or special licence; but in Scotland it continued to be the law that consent of the parties in the presence of witnesses was sufficient to constitute a valid marriage; and it became not uncommon, in the case of an elopement, to cross the Scottish border to Gretna Green, where the village blacksmith read the English marriage service, and the consent of the parties was expressed by their concurrence in this *quasi*-ceremony. The Marriage (Scotland) Act, 1856, s. 1, put an end to Gretna Green marriages by providing that no irregular marriage contracted in Scotland after the 31st December, 1856, should be valid unless at least one of the parties usually resided or had for the twenty-one preceding days been in Scotland.

Grey Seals (Protection) Act, 1914. Under this statute anyone killing, wounding or taking the grey seal between 1st October and 15th December is liable to a penalty not exceeding £5. The Act was of limited duration, but has been kept in force by the Expiring Laws Continuance Acts.

The grey seal runs to a length of eight feet, as against the four or five feet of the common seal, and, in these countries, is generally found only on the western coasts of Ireland and Scotland.

Grievous Bodily Harm. There is no statutory definition of this expression.

See ACTUAL BODILY HARM; BODILY HARM.

Grith; Grithbreche; Grithstole. In Anglo-Saxon times these words meant respectively the peace, a breach of the peace (or a penalty for a breach of the peace), and a sanctuary.

Groat. See SILVER COINS.

Grocer. Formerly this meant a *grossier* or *grossarius*, that is to say, one who bought and sold in the gross, and who would now be called a wholesale dealer. The statute 37 Edw. 3, c. 5, says of "*les marchauntz nomez grossers engrossent totes maneres des marchandises vendables*" (the merchants called grocers engross all kinds of saleable merchandise). The word is not found in the modern sense before 1465.

Grogging. The popular description of any process for the extraction of spirit from the wood of an empty cask in which spirit had been stored. It is punishable summarily under the Finance Act, 1898, s. 4.

Groom. The designation, with an explanatory affix, of various officers of the royal household. There are still a number of Grooms in Waiting; and there is a Groom of the Robes. From about the year 1500 to the reign of George III. there was a Groom Porter, who provided facilities for gaming; there was formerly a Groom of the Cross-bows; and there were also various other grooms, such as the Groom of the Stole (See MISTRESS OF THE ROBES), the Groom of the Beds, and the Groom of the Privy Chamber. The Groom of the Posset was invented by Thackeray.

Gross. See IN GROSS.

Gross Bois. Timber (2 *Inst.* 642).

Grotius. Hugo de Groot, commonly called Grotius, was born at Delft on the 10th April, 1583, and died in Rostock the 28th August, 1645. He wrote *Mare Liberum* and *De Jure Belli et Pacis*, two important works on international law; and various smaller works. See SELDEN.

Groundage. Dues levied upon ships using a port. The modern term is harbour dues.

Ground Game. Hares (q.v.), but not rabbits (q.v.) are included in the term game (q.v.), but the Ground Game Act, 1880, s. 8, enacts that both one and the other are included in the term "ground game" for the purposes of that Act. That Act, as amended by the Ground Game (Amendment) Act, 1906, gives the occupier of land the right, inseparable from his occupation, to kill (himself or through certain specified persons) ground game upon his land concurrently with any other person who has the right to kill ground game thereon. The Act was passed (see Preamble) to enable "occupiers to protect their crops from injury and loss by ground game"; and (see s. 4) no game licence is required, though a gun licence is necessary if a gun be used.

Ground-rent. See RENT.

Ground Writ. See *Testatum Writ.*

Grouse. See GAME. The present close time is from 10th December to 12th August.

Growing Crops are part of the land, and therefore if A conveys or devises land to B the crops pass with it and belong to B. If, however, the owner dies intestate, the crops go to his executors, and not to his heir-at-law, because they are mainly the result of labour incurred at the expense of his personal estate. Tenants for limited terms are sometimes entitled to reap crops which have been sown by them, when their estate has determined before the crop is ripe. (See AWAY-GOING CROP; EMBLEMENTS.) Growing crops are liable to be taken in execution under a *fieri facias*, subject to the landlord's right of distress.

An assignment or charge of growing crops does not require registration as a bill of sale (q.v.), if by the same instrument any freehold or leasehold interest in the land is conveyed or assigned to the same person. See ss. 3, 4, 7 of the Bills of Sale Act, 1878.

Growth Halfpenny. This is said to have been "a rate paid in some places for the tithe of every fat beast, ox or other unfruitful cattle."

Gruarii. The principal officers of the forest generally.

Guarantee; Guarantie; Guarantor; Guaranty. A guarantee, guarantie, or guaranty, is a collateral promise to answer for the debt, default or miscarriage of another, as distinguished from an original and direct contract for the promisor's own act. It is, therefore, of the essence of a guarantee that there should be some one liable as principal: consequently where one person agrees to become responsible for another, but no valid claim ever arises against the latter, no contract of guarantee exists.

The person who binds himself by the guarantee is called the guarantor or the surety, the person to whom it is made the guarantee, and the person for whom it is made is called the principal. Thus, if A agrees to supply goods to B in consideration of C's promise to pay him for them if B fails to do so, this is a contract of guarantee by C, who is the guarantor or surety, A being the guarantee and B the principal.

Under the Statute of Frauds, s. 4, every guarantee must be in writing, but (Mercantile Law Amendment Act, 1856, s. 3) the consideration need not be stated.

A continuing guarantee is one which continues in force until recalled by the guarantor, as opposed to a guarantee applying only to a

particular act, sum or transaction: thus, a guarantee "for any goods which A may supply B with to the amount of £100," is a continuing guarantee, and is, therefore, not discharged by one transaction, that is, by a supply of goods to the amount stated and a payment for them.

It is sometimes a question whether a continuing guarantee can be determined by the guarantor or not. In the instance above given, there seems no doubt that the guarantor could withdraw the guarantee at any time by notifying A that he would not be liable for any goods supplied to B *after that date*. Such a guarantee would also probably be determined *ipso facto* by the guarantor's death. But if the arrangement is of such a nature that the person to whom the guarantee is given cannot put a stop to future transactions, then the guarantee is not determinable by the guarantor, or on his death.

A representation in the nature of a guarantee is where A makes a wilfully false representation to B as to the credit or solvency of C, whereby B is induced to trust C. It gives B a right of action for damages against A, if B trusts C and thereby loses money.

As to companies limited by guarantee, see COMPANY.

Guardian; Gardein; Gardeyn. One or other of these words was often used anciently as part of a title, such as the Guardian of the Cinque Ports, in which now the word "warden" is substituted.

Guardian is a person having the right and duty of protecting the person, property, or rights of someone who is supposed to be incapable of managing his own affairs, such as an infant or a lunatic. They are of two kinds, guardians of the person or property, and guardians *ad litem*. See GUARDIANS OF THE POOR.

I. Guardians of the person or property of infants are of five kinds, namely, by the common law, by statute, by custom, guardians by nature in the modern sense, and by judicial appointment.

Guardians by the common law were formerly of five kinds, viz., guardian in chivalry, guardian by nature (in the technical sense), guardian in socage, guardian by nurture, and guardian by election. The first two are completely obsolete, the last three practically so. Guardians in chivalry and in socage are sometimes called guardians by tenure. Before tenure by knight's service was abolished, one of its incidents was guardianship or wardship in chivalry, "for," says Littleton, "when such tenant dyeth, and his heire male be within the age of 21 yeares, the lord shall have the land holden of him untill the age of the heire of 21 yeares. . . . And also if such heire be not married at the time of the death of his ancestor, then the lord shall have the wardship and marriage of him," that is, the wardship of the heir's person as well as of the land. While the lord had the wardship he was said to be guardian in right; if he assigned the wardship of the land or person of the heir or both to another person, the grantee was called guardian in fact or guardian in deed. But if land held by knight's service descended to an eldest son under age during the lifetime of his father, "in this case," says Littleton, "the lord shall have the wardship of the land, but not of the bodie of the heire, because none shall be in ward of his bodie to any lord, living [*i.e.*, during the life of] his father." This guardianship of the father was called guardianship by nature in the proper sense of the phrase, and it applied only to the custody of an heir apparent. According to the old law, if land or any other tenement held in socage descended to an heir under the age of fourteen, the next of blood to whom the inheritance could not descend had the wardship of the land and of the heir until the heir attained fourteen (or, in the case of gavelkind land, fifteen), when the heir could enter and oust the guardian and occupy the land himself. During the wardship the guardian could grant leases for a term ceasing on the ward attaining fourteen. This was called a guardianship in socage, and though in theory it may still exist, it is in practice obsolete. Where a child has a testamentary guardian (*infra*), the guardian in socage has no authority. Guardianship by nurture only occurs where the infant is without any other guardian, and none can have it except the father or mother. It extends no further than the custody and government of the infant's person, and determines at fourteen in the case both of males and females. Guardianship by election is where an infant himself chooses a guardian, which he can only do when he would otherwise be wholly without one. This may happen either after seven but before fourteen, when the infant has no guardian by tenure and the father and the mother are dead without having appointed a guardian; or after fourteen when the infant has been in wardship by socage, which terminates on his attaining fourteen. As to guardians by election in probate practice, see *infra*.

Guardians by statute:—The statute 12 Car. 2, c. 24, s. 8, enacts that any father may by

deed or will from time to time dispose of the custody and tuition of his children during their minority or any less time to any person or persons other than "popish recusants," and that such disposition shall be good against all persons claiming the custody of any such child as guardian in socage or otherwise, and that the guardian so appointed shall take into his custody and management the property of the infant for his benefit. A guardian so appointed is called a guardian by statute or testamentary guardian. The words disqualifying "popish recusants" have never been expressly repealed; but the Roman Catholic Relief Act, 1829, s. 10, would seem to have impliedly repealed them. The statute 9 Will. 3, c. 32, disqualifies any person twice convicted of blasphemy, and this disqualification still exists. The Guardianship of Infants Act, 1886, makes a wife who survives her husband either the sole guardian, if the husband has appointed no guardian, or the guardian jointly with any guardian appointed by the husband: it also empowers a wife to appoint by deed or will guardians or a guardian to act after her death with her husband, or, after his death, with any guardian appointed by him or as sole guardian or guardians if he makes no appointment; and, amongst other provisions, it empowers the High Court to remove any testamentary guardians appointed, whether under this Act or that of Charles II.

Guardianship by custom is said to occur in the city of London and various other cities and boroughs, where the mayor and aldermen have the guardianship of orphans; in the county of Kent, when a tenant in gavelkind dies leaving his heir or heirs under fifteen; and in certain manors, where the lord has the power of naming or is himself the guardian of an infant copyholder. But these kinds of guardianship are obsolete.

Guardianship by nature, in its modern sense, is a term of somewhat uncertain scope, but the meaning intended to be conveyed by it seems to be that where a child has some property or rights in respect of which it requires to be represented, then its father, if it has one, is its guardian by nature, and if it has no father or other guardian, then its mother is its guardian by nature. So a mother is called the natural guardian of her illegitimate children, apparently because the full legal relation of parent and child is not recognised in the case of illegitimate children. Some writers, however, use the term "guardianship by nature" to express the ordinary relation of parent and child, but this is unnecessary and confusing.

Guardians of the person or property by judicial appointment:—The Chancery Division of the High Court, in the exercise of its general jurisdiction over infants (Judicature Act, 1873, s. 34), will appoint a suitable guardian to an infant ward of Court where there is no testamentary guardian or guardian in socage, or where the father or guardian is unfit to have charge of the child. Such a guardian can take no steps as to the person or property of the infant without the direction of the Court. In probate practice, where a person who would otherwise be entitled to a grant of probate or administration is under age and has no testamentary or judicial guardian, a curator or guardian is appointed for the purpose of taking out letters of administration for his use and benefit during his minority. If he is above the age of seven, but under twenty-one, he is styled a minor, and has the privilege of electing, subject to the approval of the Court, any one of his next of kin to be his guardian, which he does by signing and filing an instrument to that effect: if he is under seven, he is styled an infant, and is considered incompetent to elect a guardian: one of his next of kin is therefore appointed guardian for him by the Court. See GRANT.

II. Guardians *ad litem*:—A guardian *ad litem* is a person appointed to defend an action or other proceeding on behalf of an infant (R. S. C., Ord. 16, r. 18) or a lunatic or idiot not so found (*ib.*, r. 17) who is defendant or respondent to a proceeding in the Court. If no such guardian enters an appearance on behalf of the infant or lunatic, the plaintiff may apply for the appointment of a solicitor as the guardian (Ord. 13, r. 1). In divorce practice, an infant elects his guardian *ad litem*, for the purpose of proceeding on his behalf as petitioner, respondent or intervener. (Divorce Rule 105.)

See NEXT FRIEND.

Guardian of the Cinque Ports. An ancient alternative title of the Lord Warden of the Cinque Ports. See CINQUE PORTS.

Guardians of the Poor. By the Poor Law Amendment Act, 1834, where any parishes are formed into a union with the concurrence of the Poor Law Commissioners (now the Ministry of Health), its affairs are administered by a board of guardians elected originally by the ratepayers and owners of property in the respective parishes, but now by nearly the whole adult population. And where the Ministry of Health direct that the poor law

matters of any single parish shall be administered by a board of guardians, they are elected and constituted in the same manner. All justices of the peace were *ex-officio* guardians under s. 38 of the Act of 1834; but since 1894 all guardians have been elected (Local Government Act, 1894), s. 20 (1)) and now, under the Representation of the People Act, 1918, ss. 3, 4 *et seq.*, practically all men and all women who or whose husbands own or rent premises within the union possess the franchise.

See POOR.

Guardian of the Spiritualities of a diocese is the person to whom presentations may be made, and by whom institutions, etc., may be given during the absence of a bishop from England, or during the vacancy of the see. Usually the archbishop is the guardian. See TEMPORALITIES.

Guelphs-Hanover, Order of. This Order was instituted in 1815 when Hanover became a kingdom. For the following twenty-two years the Kings of England were also Kings of Hanover, and the order was conferred on British subjects. When Queen Victoria became Queen of England, her uncle, the Duke of Cumberland, became King of Hanover, and the order became entirely a foreign order.

Guernsey. One of the Channel Islands (q.v.).

Guest-taker. Anciently this meant an agister (q.v.).

Guidon de la Mer. A French treatise, composed during the latter half of the sixteenth century and first published in 1607, which sets out the maritime law of the period. Many of the propositions laid down by the author became part first of the French law and subsequently of the law of other nations. See CONSOLATO DEL MARE.

Guild. See GILD.

Guildhalda Teutonicorum. (The Guildhall of the Germans.) According to the *Termes de la Ley*, it was used as meaning "the fraternity of Easterling Merchants in London called the Stilyard." The "Steelyard" (q.v.) meant not only the place so called, but also the association of German merchants forming the Hanse (q.v.).

Guildhall Sittings. For many years before 1883 sittings (known as the Guildhall Sittings and sometimes also as the London Sittings) had been held at the Guildhall of the City of London by judges of the common law Courts, and, after the Judicature Acts, of the King's Bench Division, under commissions issued for the trial of issues or inquiries in London cases at *nisi prius*. By Order in Council made 22nd May, 1885, under s. 20 of the Courts of Justice Building Act, 1865, such cases were ordered to be tried in future at the Royal Courts of Justice. The Supreme Court of Judicature (London Causes) Act, 1891, sanctioned a resumption of the ancient practice; but this provision was acted on for only a short time and sittings at the Guildhall have not been held for many years past.

Guilty. See PLEA.

"Guilty but Insane." See INSANITY.

Guilty Mind; Guilty Knowledge. See MALICE; MENS REA.

Guinea. The guinea and half-guinea were last coined in 1817; and in 1831 they ceased to be legal tender. See GOLD COINS.

Gule of August. Anciently the 1st of August was sometimes called by this name. It is better known as the feast of St. Peter ad Vincula.

Gun. See FIREARMS.

Gunbarrels. The Gunbarrel Proof Act, 1868 (31 & 32 Vict. c. cxiii.), and the regulations made thereunder, provide that all barrels of shotguns, rifles and pistols—but not of airguns—which are used in the United Kingdom, must be proved, that is to say tested for safety, either at the Birmingham Proof House or by the Gunmakers' Company of the City of London, and must bear marks indicating that they have been so proved.

Guncotton; Gunpowder. See EXPLOSIVES.

Gwabr merched. In Carmarthenshire this was used as meaning Marchet (q.v.).

Gwalstow. A place for the execution of criminals: see Leg. Hen. 1, c. 11.

Gylput. The name of a Court which anciently was held every three weeks in the hundred of Pathbew, in Warwickshire.

Gylwite. Stated by Jacob to have been used in the Laws of Edgar as meaning a mulct or compensation for trespass.

Gypsy. See EGYPTIANS.

H

Habeas Corpora juratorum. This was a writ upon which trial of causes at *nisi prius* was had in the Court of Common Pleas. It commanded the sheriff to have before the Court at Westminster, or before the judges of assize and *nisi prius*, the bodies of the jurors named in the panel to the writ as having been summoned to make a jury for the trial. It was abolished by the Common Law Procedure

Act, 1852, s. 104. Compare DISTRINGAS; VENIRE FACIAS JURATORES.

Habeas Corpus is a writ so called because it is directed to a person who detains another in custody and commands him to produce or "have the body" of that person before the Court for a specified purpose.

The most important species of *habeas corpus* is that which is called by way of distinction the *habeas corpus ad subjiciendum*, from its commanding the person to whom it is directed to produce the body of the person detained, with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipiendum*—"to do, submit to and receive" whatsoever the Court shall direct. This writ was formerly much used for testing the legality of imprisonment for political reasons, especially during the reigns of the Stuarts; and the evasions and abuses practised by the judges (at the instance of the Crown) to detain state prisoners in prison, led to the enactment of the Habeas Corpus Act, 1679. This Act in effect made the granting of a *habeas corpus* compulsory in the case of a person imprisoned without a legal cause being assigned in the warrant of committal, and provided for the speedy trial of persons imprisoned for treason or felony. The Habeas Corpus Act, 1816, passed to render the writ more effectual in cases not within the statute of Charles II., provided for the issue and return of a *habeas corpus* in vacation as well as in term, and for examining into the truth of the facts stated in any return to a *habeas corpus*. The Habeas Corpus Act, 1862, enacts that no *habeas corpus* shall issue out of England into any colony or foreign dominion of the Crown where there is a Court having authority to issue the writ; subject to this limitation, the writ of *habeas corpus* runs into all parts of the dominions of the Crown. At the present day the writ is only used to determine questions of law, *e.g.*, as to the legality of an imprisonment (as where a person is arrested under the Extradition Acts), or as to the person entitled to the custody of an infant, or the like. The writ of *habeas corpus ad subjiciendum* is a prerogative writ. See WRIT.

The following kinds of *habeas corpus* have become practically obsolete since the abolition of arrest on mesne process and of imprisonment for debt—(1) *Habeas corpus ad respondendum*, to bring up a prisoner confined by the process of an inferior Court, to charge him with a fresh action in the Court above; (2) *ad satisfaciendum*, used with a similar object when judgment had been given in the inferior Court against the prisoner; (3) *habeas corpus cum causâ* (or *ad faciendum et recipiendum*), to remove, from an inferior Court to the Court above, an action in which the defendant had been arrested.

The writ of *habeas corpus ad prosequendum, testificandum, deliberandum, etc.*, was formerly used when a prisoner had to be brought up to bear testimony in any Court, or to be tried in the proper jurisdiction; the provisions of the Criminal Procedure Act, 1853, s. 9, the Criminal Law Amendment Act, 1867, s. 10, the County Courts Act, 1888, s. 112, and the Prisons Act, 1898, s. 11, have made the writ obsolete.

Habemus optimum testem confitentem reum (*Fost. Cr. L.* 243). (We deem an accused who pleads guilty to be the best possible witness.) "What is taken *pro confesso*, says Lord Stowell, is taken as indubitable truth. The plea of guilty by the party accused shuts out all further inquiry. *Habemus confitentem reum* is demonstration, unless indirect motives can be assigned to it" (2 Hagg. 315). But in murder cases a plea of guilty is rarely accepted, the general course being to get the accused to enter a formal plea of not guilty in order that the evidence may be brought out.

Habendum. This is the clause in a conveyance which indicates the estate to be taken by the grantee. Formerly it commenced "To have (*habendum*) and to hold (*tenendum*)," the words "to hold" being of effect where the land was held of some superior lord. Now it commences merely "To hold," and though the *habendum* proper has thus been dropped, the clause is still known as the *habendum*.

Haberdepayes. Avoirdupois (q.v.).

Habere facias possessionem (that you cause to have possession) was the name for the writ by which the claimant in the old action of ejectment (if successful) obtained possession of the land in question. The name is still sometimes applied to the analogous writ of possession now used, which is in similar terms. See WRIT OF POSSESSION.

The writ of possession now used under the Tithe Acts, 1831 and 1891, is still properly known as the writ of *habere facias possessionem*. See App. 8, No. 7B to R. S. C.

Habere facias seisinam. (That you cause to have seisin.) A writ which was formerly addressed to the sheriff requiring him to give seisin of a freehold estate recovered in an action.

Habere facias seisinam quia Rex, etc. An

alternative title of the writ SEISINA HABENDA (q.v.).

Habere facias visum. (That you cause to have the view.) A writ which formerly issued in formedon and other real actions where it was necessary that a view should be had of lands in question.

Habitual Criminal. The preventive detention of habitual criminals is provided for by the Prevention of Crimes Act, 1908, ss. 10-16. For the purposes of that Act, the expression "habitual criminal" means a person who, after attaining the age of sixteen years, has been three or more times convicted, either before or after the passing of the Act, of the following crimes or some one or more of them—any felony, uttering false or counterfeit coin, possessing counterfeit gold or silver coin, obtaining goods or money by false pretences, conspiracy to defraud, or any misdemeanour under the Larceny Acts, 1861 and 1916—and who is proved to have been persistently leading [between the expiration of his last sentence and the commission of the offence for which he is indicted] a dishonest or criminal life, or any person who, on any such previous conviction has been found to be an habitual criminal and sentenced to preventive detention under the Act (s. 10 (2)). The question whether any person who is tried on indictment for any of the above-mentioned offences is an habitual criminal is also tried on indictment; if he is convicted of the offence and also of being an habitual criminal, he may, if sentenced for the offence to a term of penal servitude, be ordered to undergo, at the expiration of his term, preventive detention for not more than ten or less than five years.

Habitual Drunkards. The Acts dealing with habitual drunkards are the Habitual Drunkards Act, 1879, the Inebriates Act, 1888, the Inebriates Act, 1898, and the Inebriates Act, 1899. They are collectively entitled (Act of 1899, s. 3) the Inebriates Acts, 1879 to 1899. They provide for (1) the establishment of private retreats and State and certified inebriate reformatories; (2) the voluntary detention in private retreats of habitual drunkards; (3) the compulsory detention in State or certified inebriate reformatories of habitual drunkards (*a*) who are convicted on indictment of offences punishable with penal servitude or imprisonment, or (*b*) who are convicted of various offences involving drunkenness and within the twelve months preceding such conviction have three times been convicted of any such offence; and (4) the protection of property from a wife or husband who is an habitual drunkard. For the purposes of the Acts an "habitual drunkard" means (see s. 3 of the Act of 1879) "a person who not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquors, at times dangerous to himself or herself or to others, or incapable of managing himself or herself or his or her affairs." See SEPARATION ORDER.

Hackbut; Hagbut; Haquebut; Harquebus. A firearm, otherwise known as a demyhake, the total length of which, under the statute 33 Hen. 8, c. 6, s. 2, could not legally be less than three-quarters of a yard. See also the statute 4 & 5 Ph. & M. c. 2.

Hackney Carriage. See CAB.

Hade of Land. A strip of land left unploughed between two ploughed portions of a field.

Hadfield's Act. The popular title of the Judgments Act, 1864, which was introduced by Mr. George Hadfield, M.P.

Hærede abducto, De. A writ which anciently lay for one, who was entitled to the wardship of his tenant under age, when the tenant had been carried off by another.

Hærede deliberando alteri qui habet custodiam terræ, De. A writ which required the sheriff to hand over an heir to one who had custody of the heir's land.

Hæredem, qui ex testamento succedit in universum jus testaris (*Co. Litt.* 237). Coke, explaining the difference between the heir (q.v.) of the English law and the *hæres* of the Roman law, says "the civilians call him *hæredem*, etc.," that is to say, the civilians call him the *hæres* who by force of a testament succeeds to all the rights of the testator.

Hærede rapto, De. The writ of ravishment of gard. (q.v.).

Hæredi magis parcendum est (*Dig.* 31, 1, 47). (The *hæres* [of the Roman law] is to be treated with the greater tenderness.) This is merely the *dictum* upon which one Proculus Nepos decided that the construction of a testament which was most favourable to the *hæres* ought to be adopted.

Hæredipeta. The next heir to lands: see Leg. Hen. 1, c. 70.

Hæreditas, alia corporalis, alia incorporalis: corporalis est, quæ tangi potest et videri; incorporalis quæ tangi non potest nec videri (*Co. Litt.* 9). An inheritance (q.v.) is in some cases corporeal and in others incorporeal. A corporeal inheritance is one which is tangible and visible: an incorporeal inheritance is intangible and invisible. Thus it may be

either land or a perpetual rent issuing out of land.

Hæreditas nihil aliud est quam successio in universum jus quod defunctus habuerit (*Dig.* 50, 17, 62). Heirship is nothing else than the succession to all the rights of a deceased. This is purely Roman law: our law knows nothing of the *hæres* of the Roman law. See HÆREDEM, etc.

Hæreditas nunquam ascendit (*Glanville*, l. 7, c. 1). Inheritance never ascends, that is to say, is never from a descendant to an ancestor, these words being taken in their ordinary sense. But this is no longer the law. See DESCENT. See PATER ET MATER NON, etc.

Hæredum appellatione veniunt hæredes hæredum in infinitum (*Co. Litt.* 9). (Under the denomination of heirs are included the heirs of heirs for ever.) Nevertheless, the old form of grant of lands to a man was to him and his heirs for ever; but the modern grant to him and his heirs would always have been just as effectual. Compare HEIR IS, ETC.

Hæres. An heir (q.v.). See ASTRARIUS.

Hæres est aut jure proprietatis, aut jure repræsentationis (3 *Rep.* 40). (An heir is by right of property, or by right of representation); that is to say, as Coke explains, the eldest son is the heir *jure proprietatis*, but if the eldest son dies in the life of his father his issue take *jure representationis* in preference to the younger son of the father. See *Co. Litt.* 10 *b*.

Hæres est nomen juris, filius est nomen naturæ (*Bacon Max. Reg.* 11). (Heir is a name of law, son is a name of nature.) That is to say an heir is such by the course of the law, while a son is such in the course of nature.

Hæres legitimus est quem nuptiæ demonstrant (*Co. Litt.* 7). (The lawful heir is he whom wedlock shows so to be.) That is to say, land can descend only as between persons whose relationship can be traced through lawful wedlock and where the birth of the person claiming as heir has taken place after wedlock.

Hæretico comburendo, De. See HERESY.

Hafne. An early spelling of haven. "Hafne courts" were granted to Richard Duke of Gloucester, High Admiral of England, by letters patent of 5 Edw. 4.

Hague Conference. A meeting of the representatives of practically every important State which was held at The Hague in 1899, in order to promote disarmament, a more humane method of conducting wars, and arbitration as a means of preventing wars. The most important result was the signing of the Hague Arbitration Convention, under which a permanent court—known as the Panel of Arbitrators, or the Permanent Hague Court, or the Tribunal of the Hague—was established for the settlement of international disputes. The court worked very well as regards various questions—such as the Newfoundland Fishery dispute—but it obviously could not prevent such a calamity as the war of 1914-18. See also GENEVA CONVENTION.

The conference reassembled in 1907 in order to consider various suggestions for the mitigation of the horrors of war and as to contraband, etc.: but little came of this further meeting.

Haia. This, which is a form of *hagia* (a hedge), was sometimes used in the time of Bracton, as meaning an enclosed park.

Haliwerkfolk. See HALIWERFOLK.

Hake. A species of gun capable of firing small shot: the statute 2 & 3 Edw. 6. c. 14, restricted its use. The word, of course, also meant a species of fish, as it still does.

Hale. Sir Matthew Hale was born at Alderley in 1609, became serjeant-at-law, a justice of the Common Pleas in 1654, Chief Baron of the Exchequer in 1660, Lord Chief Justice in 1671, and died in 1676. He wrote a History of the Common Law, an Analysis of the Law, a Treatise on Pleas of the Crown, —all of which are works of authority—and some minor works.

Half Blood. See BLOOD.

Half Bowl. See CLOSH.

Half-crown. See GOLD COINS; SILVER COINS.

Half-mark. Where a writ of right (q.v.) was brought and the seisin of the plaintiff or his ancestor was alleged, the defendant was not allowed to traverse (or deny) the seisin, but he could "tender the half-mark" and thereby put the plaintiff upon proof of the seisin alleged. See SILVER COINS.

Halfpenny. See COPPER COINS; SILVER COINS.

Half-seal. The seal formerly used in the Court of Chancery to seal commissions to delegates upon any appeal, whether maritime or ecclesiastical, to the Court of Delegates. See DELEGATES.

Half-timer. This was the popular designation of a child employed in a factory or workshop during such periods as are specified in ss. 24-27 of the Factory and Workshop Act, 1908, who, except for such employment, would have been obliged to put in full attendance at school, but who in consequence of such employment was, under s. 68 of the

same Act, permitted to put in a reduced number of attendances at school. Now, as will be seen under FACTORIES, a child under fourteen, and in some cases a child under fifteen, cannot be employed in a factory or workshop. The "half-timer" is consequently extinct.

Half-tongue. *Medietas Linguæ*: see JURY.

Halifax Gibbet Law. The burgesses of Halifax had from ancient times a right, probably originating in some royal grant, to execute anyone taken within the liberty of Halifax who was found guilty of the theft of goods to the value of more than thirteen pence. The execution was carried out upon a hill outside the town, the criminal being decapitated with an instrument resembling the modern guillotine. The last execution under the law was in 1650. The Halifax Gibbet Law was a survival of the law of infangtheft (q.v.). See CONFESSAND.

Haliwerfolk. This is an Anglicised form of the Old English *haligweresfolc*, which meant "the folk of the holy man": the holy man was St. Cuthbert and his folk were those who held their lands by the service of defending his tomb and the possessions of the see of Durham. By the fourteenth century the origin of the word had come to be forgotten: it was corrupted into "halywarkfolk and holy workfolk"; and the popular explanation that these words meant the folk of the holy work was accepted by various writers of law dictionaries down to our own time.

Hall. An abbreviated title of the Court of Common Hall. See LONDON.

Hallage. A toll upon goods sold in a building used as a mart, as Blackwell Hall in the City of London was formerly.

Hallamas. Formerly this meant the feast of All Hallows or All Saints (q.v.). The more correct form would appear to be Hallowmass: but that word would seem to be Scotch rather than English.

Hallamshire. One of the manors comprised in the borough of Sheffield.

Hallimote; Hallmote. An Anglo-Saxon court corresponding to the later court baron (q.v.). The name is still applied to the courts of manors forming part of the endowment of the see of Durham: and the meetings of the City Companies (q.v.) in their halls are known as hallmotes.

Hambling; Hammelling. The same as expeditation (q.v.).

Hamburg Company. See MERCHANT ADVENTURERS.

Hamfare. The same as HAMESÖKEN (q.v.): see Leg. Hen. 1, c. 80, par. 11.

Hamsocne; Hamesoken. In Anglo-Saxon and early post-Conquest law this meant an attack on a dwelling-house or an attack on a man in his own house.

Hanaper. See CLERK OF THE HANAPER; COMPTROLLER.

Handborow. According to Spelman, and the copyists of Spelman, this meant one or each of the nine sureties associated with the headborough (q.v.) in the frankpledge: but it is doubtful whether the word ever existed outside the glossaries and dictionaries. See MURRAY, *s.v.*

Handgrith. This seems to have meant, in Anglo-Saxon times, a protection or safeguard under the hand of the king.

Hand-habhende. A thief was said in Bracton's time to be hand-habhende when he actually had the stolen goods in his hand. See CONFESSAND.

Hand in and hand out. See CLOSH.

Handmoney. Earnest (q.v.) money.

Handsale. A sale of chattels which anciently was concluded by a shaking of hands. The custom still survives in connection with the sale of cattle in Ireland; but it is, of course, without legal effect.

Handsel. Earnest (q.v.) money.

Handwriting. In the law of evidence, where a document requires attestation for its validity, it is, as a rule, necessary to call an attesting witness to prove the signature, unless it is, for any reason impossible to produce him; but in the case of a document which, though not requiring attestation, has been attested, the signature may be proved as if it had not been attested. Evidence as to the handwriting of a person may be given (i) by a person who saw him write the document in question; (ii) by a person who has seen him write other documents and believes the writing in question to be his; the presumption arising from such evidence was formerly called *præsumptio ex visu scriptionis*: (iii) by a person who knows his handwriting from having corresponded with him or having had other opportunities of observing writing which there was reasonable ground for believing to be his (formerly called *præsumptio ex scriptis olim visis*); (iv) by an expert or other person who has compared the writing in question with a document proved, to the satisfaction of the judge, to be in the handwriting of the party (formerly called *præsumptio ex scripto nunc viso*). See COMPARISON OF HANDWRITING; DOCUMENT.

"Hanged, drawn and quartered." See HIGH TREASON.

Hanging. As to the punishment of hanging, see CAPITAL PUNISHMENT. For some time before 1834 the bodies of prisoners executed for murder were, as the Court might direct, either dissected or hung in chains: the statute 4 & 5 Will. 4, c. 26, prohibited both practices. Hanging in chains meant that the body, covered with pitch, was suspended by chains from a gibbet on some such place as a common. In the old books "hanging" is used in the sense of "pending"; thus in Coke "hanging the process" means "pending the process."

Hangwite. This was a penalty for allowing a thief or felon to escape or for hanging a felon without trial.

Hanover (Herald). See HERALDS.

Hanse. From Norman times down to the reign of Edward VI. many privileges in connection with foreign trade were enjoyed by an association of German merchants, known at first as the Old Hanse and subsequently as the New Hanse.

See STEELYARD; MERCHANT ADVENTURERS; GUILDHALDA.

Hanseatic Laws of the Sea. The maritime law of the Hanse towns was collected and published as a code by the Hanseatic League in 1591. This was accepted as authoritative throughout northern Europe. The subject had been also dealt with by the earlier laws of Wisby (q.v.). A translation of the Hanseatic Laws is given in Cleirac's *Us et Coutumes de la Mer*.

Harbinger. See KNIGHT HARBINGER.

Harbours. A harbour is a place naturally adapted or artificially made for the safe riding of ships. The term, therefore, includes ports (q.v.).

The Crown has the prerogative of appointing or constituting ports and havens, and of declaring the limits of existing harbours, where they were not originally fixed. In practice, however, a harbour is now always constituted either by a special Act of Parliament, or, under the General Pier and Harbour Act, 1861, by a provisional order of the Ministry of Transport, confirmed by Act of Parliament. The provisions of the Harbours, Docks and Piers Clauses Act, 1847 (which contains clauses usually required in Acts authorising the construction of harbours, docks and piers), apply to harbours so formed.

The Crown is conservator of all ports and harbours. Its powers and duties in this respect are now, under the Harbour Transfers Act, 1862, chiefly exercised by the Ministry of Transport.

A "harbour authority" is a body of persons, corporate or unincorporate, being proprietors of or intrusted with the duty of constructing, improving, managing or lighting any harbour (Harbours and Passing Tolls Act, 1861, s. 2).

The powers and duties of the Board of Trade with regard to harbours were transferred to the Ministry of Transport pursuant to the Ministry of Transport Act, 1919, s. 2.

Hard Labour. Hard labour is a punishment unknown to the common law, under which imprisonment was detention merely; and a sentence could be to imprisonment with hard labour only if there was express statutory authority for ordering hard labour. Now under the Criminal Justice Administration Act, 1914, s. 16 (1), "Where a person convicted by or before any Court of an offence is sentenced to imprisonment without the option of a fine, the imprisonment may, in the discretion of the Court, be either with or without hard labour, notwithstanding that the offence is an offence at common law, or that the statute under which the sentence is passed does not authorise the imposition of hard labour or requires the imposition of hard labour"; but hard labour can never be ordered when the imprisonment is in default of payment of a fine (*ib.* s. 16 (1)).

Prisoners sentenced to hard labour are to do their work in strict separation from other prisoners during the first twenty-eight days, and, if under the age of sixty, they must sleep without a mattress for the first fourteen days (Rules for Local Prisons, r. 39). These are the points which distinguish them from prisoners in the third division. See IMPRISONMENT.

See FORFEITURE.

Hardwicke's (Lord) Act. The popular title of the statute 26 Geo. 2, c. 33. See MARRIAGE.

Hare. Hares cannot lawfully be taken or killed on Sunday or on Christmas Day (Game Act, 1831, ss. 2, 3); but there is no annual close season (q.v.) for them. Hares, other than those imported from abroad, cannot, however, lawfully be sold or exposed for sale during March, April, May, June, or July (Hares Preservation Act, 1892). See GAME; GROUND GAME.

As to the destruction of hares which injure or are likely to injure trees, see RABBITS.

Haro, Clameur de. This is mentioned in the *Grand Coustumier, etc.* (q.v.). The full ancient form appears to have been *Haro, Haro, Haro, a l'aide, mon prince, on me fait*

tort. The word *Haro* was popularly supposed to be an abbreviation of *Ha Rollo*, Rollo being the first Duke of Normandy, but it is now established that it is merely a cry of distress or alarm which, in cognate forms, is found in languages other than the Norman French.

The *Clameur de Haro*, or crying of Haro was from the earliest times part of the legal system of the Channel Islands, where it has survived to our own time, though of recent years it has fallen into disuse. It consists, or consisted, of the word *Haro* three times repeated; and in Jersey and Guernsey it is the ancient form of protesting against trespass to land.

Jacob speaks of the *Clameur de Haro* as "an outcry after felons and malefactors"; but in England to "cry harrow" was merely to express distress or alarm, and no "crying of harrow" appears to have been known to our ancient law.

Harriott is the old form of *heriot* (q.v.).

Hart. In the law of the forest, this meant a stag five years old: if a hart was hunted by the king or the queen and escaped, then he was a "hart royal"; and where proclamation was made that none should hinder the return to the forest of a hart royal which had been chased out of it by the king or the queen, then that hart royal became a "hart royal proclaimed."

Hasta porci. It is recorded (see *Kennett's Parochial Antiquities*, p. 450) that Thomas de Musgrave held certain lands of the king by the service of carrying one "*hastam porci*" to the king whenever the king hunted in the park of Cornbury. Kennett translates "*hasta porci*" as "shield of brawn," and Jacob follows him; but *hasta* certainly did not mean a shield. Possibly "boar spear" is the correct translation; for *porcus* may have been corruptly used as meaning a wild boar (though properly it meant the domestic pig), and *hasta* could only have meant a spear.

Hat Money. See PRIMAGE.

Haw. This seems to have meant in Kent, much the same as messuage (q.v.), but it seems also to have been used as meaning either the house alone or the land in which it was enclosed.

Hawker. The Hawkers Act, 1888, s. 1, enacts that the word "'Hawker' means any person who travels with a horse or other beast bearing or drawing burden and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods wares or merchandise or exposing samples or patterns of any goods wares or merchandise to be afterwards delivered, and includes any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business and there sells or exposes for sale any goods wares or merchandise in or at any house shop room booth stall or other place whatever hired or used by him for that purpose." Compare PEDLAR.

The Act provides that hawkers, with certain exceptions, must hold excise licences, costing £2 and expiring on 31st March in each year; and there are also various other provisions, for which reference should be made to the Act.

Hawks. The stealing of a hawk (which meant a falcon, but no smaller hawk) was felony without benefit of clergy: see 3 *Inst.* 97, and the statutes 34 Edw. 3, 37 Edw. 3, c. 19. Interference with unreclaimed hawks when breeding involved a penalty of £10 (half of which went to the king and half to the prosecutor) under the statute 11 Hen. 7, c. 17.

Hay-bote. See ESTOVERS.

Haymarket. The statutes 2 W. & M. sess. 2, c. 8, s. 15, and 8 & 9 Will. 3, c. 17, s. 5, regulated the sale of hay in "the place now called the Hay Market near Pickadilly," which then was what its name denotes. The first of these Acts, though long replaced by other Acts relating to the metropolis, remained on the statute book until 1867; the second was repealed in 1831 by the statute 11 Geo. 4 and 1 Will. 4, c. 14, entitled "An Act for removing the market at present held for the Sale of Hay and Straw from the Haymarket; and for establishing Markets for the Sale of Hay, Straw and other articles in York Square, Clarence Gardens, and Cumberland Market in the Parish of St. Pancras and County of Middlesex." Under the Act of 1831 a market, of gradually diminishing importance, has been carried on in Cumberland Square, which lies between the Hampstead Road and the east side of Regent's Park, and, as the carriage of hay into London by carts has practically ceased, half of Cumberland Square was converted into an "open space" in the year 1922.

Hayward. This was an officer of the manor, elected and sworn in at the court baron (q.v.), whose duty it was to look after the boundary fences, and, amongst other things, to prevent animals from trespassing on meadows, etc.

Hazard. An unlawful game with dice. See GAMING.

"He." In every Act passed after the year 1850, and in every enactment, no matter when passed, relating to an offence punishable

on indictment or summarily, "he" includes "she," unless the contrary intention appears (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1.

Headborough. Originally this was the chief of the ten men who made up a frankpledge. During the thirteenth century, and probably during earlier times, there were for the various frankpledges, tithings and townships, persons known as headboroughs (or borrow heads), borsholders (borghs alders) and tithing men, elected by the courts leet, who were entrusted with the maintenance of order in the areas for which they were elected. They are mentioned so late as 1848 in the Summary Jurisdiction Act, 1848, s. 3, and the Indictable Offences Act, 1848, s. 10; but by that time they had only a shadowy existence. They had been gradually replaced by the petty and parish constables (q.v.) who would seem to be first mentioned in the statute 2 Edw. 3, c. 3, and who would seem to have derived from them the various powers of a constable (as to arrest, etc.) at common law. See HANDBOROW.

Headlam's Acts. The popular title of the Trustee Acts, 1850 & 1852, both of which were carried through the House of Commons by Thomas Headlam, M.P., who subsequently was judge advocate-general.

Head Money. A poll tax. See POLL MONEY.

Head Pence; Head Silver. From a recital in the statute 23 Hen. 6, c. 7, it appears that the sheriffs of Northumberland had been accustomed to levy off the inhabitants of the county a sum of £40 twice in every seven years, that is to say every third and fourth year, for their own personal profit. This levy, which was called head pence or head silver, was prohibited by the statute.

Healfang; Halsfang. The pillory, or a fine as an alternative to the pillory. See the Leg. Hen. 1, c. 11, s. 7, where helsfang is made the punishment for false testimony. The words are Anglo-Saxon: but it is doubtful whether the pillory was used before the Conquest.

Health, Minister of. This minister is appointed under the Ministry of Health Act, 1919, s. 1. By s. 3 of that Act there were transferred to him all the powers and duties of the Local Government Board (q.v.) and of the Insurance Commissioners (q.v.) and the Welsh Insurance Commissioners and, to put it comprehensively, all such powers and duties of a multiplicity of ministries, boards, departments, etc., as have anything to do with the preservation of health or the prevention or cure of disease. The Minister of Health has a salary of £5,000 a year (s. 6 (1)); he can sit in the House of Commons (s. 7 (5): New Ministries and Secretaries Act, 1916, s. 12 (1)); and he is, and apparently will generally be, a member of the Cabinet.

See CONSULTATIVE BOARDS; OFFICE OF PROFIT.

Hearing. Under the practice in Chancery before the Judicature Acts the hearing of a cause was the argument of it in Court after the conclusion of the pleadings and the close of the evidence. In the case of a suit heard on motion for decree, the original hearing on the motion for decree frequently did not dispose of the suit, but made it necessary to have a subsequent hearing on further consideration (q.v.). Under the present practice the hearing of an action takes the form either of a trial or a motion for judgment (q.v.).

Hearsay. See EVIDENCE.

Hearth Money. Anciently used as meaning Church Scot (q.v.), but more generally used as an equivalent for CHIMNEY MONEY (q.v.).

Hearth-penny (Romescot). Peter-pence (q.v.).

Heath Cock; Heath Polt. These terms are used in the statute 4 W. & M. c. 23, s. 9, as synonyms of blackcock (q.v.).

Hebbermen; Hebberwears. These respectively were men (see the statute 4 Hen. 7, c. 15) who fished below London Bridge during the ebb-tide, and wears or engines (see Form of Commission to Commissioners of Sewers in the statute 23 Hen. 8, c. 5) set up in tidal waters to catch fish on the ebb-tide.

Heck. A grating used to catch fish or to obstruct their passage: mentioned in the statutes 12 Edw. 4, c. 7, 23 Hen. 8, c. 18, and 43 Geo. 3, c. 45, s. 15.

Hedge-bote. The same as hay-bote: see ESTOVERS.

Heineccius was born at Eisenberg in 1681, became professor in Halle, and died in 1741. He wrote numerous works on Roman law, which, though somewhat out of date, are still occasionally referred to. The principal are the *Elementa Juris Civilis* and the *Antiquitatum Syntagma.*

Heir. The word "heir," when used to describe or designate a given person, includes three classes, "heirs at law" (or "heirs" simply), "heirs apparent" and "heirs presumptive."

An heir (or heir at law) is a person who stood in such a degree of relationship to a deceased person (called the ancestor), that the real property of the latter has descended to

him, or would have descended to him if the ancestor had died intestate. The mode in which the relationship is to be computed is regulated by the canons of descent laid down by the Inheritance Act, 1833. See DESCENT.

With reference to the rules of descent, by virtue of which they inherit, heirs are of the following kinds: (i) the heir at common law is he to whom his ancestor's lands, etc., descend according to the common law as modified by the Inheritance Act, as opposed to (ii) a customary heir or special heir, who inherits by virtue of a custom, such as gavelkind or borough-English; (iii) an heir general takes by descent as fixed by law, as opposed to (iv) an heir special or heir in tail, who claims as issue in tail *per formam doni*, *i.e.*, according to the nature of the estate tail; hence heirs special are called "heirs male of the body," "heirs in special tail," etc., according to the variety of the entail, see ESTATE TAIL.

With reference to the nature and degree of the relationship between the ancestor and the heir: (i) Formerly a person was said to be lineal if he was lineally descended from his ancestor, as son, grandson, etc.; for, before the Inheritance Act, 1833, descent could not be traced lineally upwards, from son to father, but now an heir may be a lineal descendant or a lineal ancestor. (ii) A collateral heir is related to his ancestor by being descended with him from a common progenitor, as in the case of brothers, cousins, nephew and uncle, etc. (iii) An heir of the whole blood is descended from the same pair of progenitors as his ancestor, while (iv) an heir of the half blood and his ancestor have only one common progenitor. Thus A and B his wife have two sons, X and Y.: B. dies, and A marries C, and they have a son Z: here Y is heir of the full blood to X, but only heir of the half blood to Z. (v) Heirs of the part of the father are those related by blood to the father of the ancestor (*e.g.*, a paternal uncle), and (vi) heirs of the part of the mother, are those related by blood to the mother of the ancestor, but this distinction is not now of importance. (See DESCENT.) (vii) Heir by propinquity is where the heir takes as being the nearest blood relation, as opposed to (viii) heir by representation, where he takes as representing or standing in the place of his ancestor. See the fourth canon of descent, DESCENT.

The following distinctions are not now of practical interest.—"Immediate heir" was formerly used to signify that the heir was heir apparent or presumptive at the death of the ancestor, as opposed to the case where there is an intermediate descent without seisin (See DESCENT.) Formerly a person might be heir and not absolutely heir; as if land descended to an heir presumptive and afterwards a nearer heir was born (Co. Litt. 11b); but since the Inheritance Act, 1833, this is impossible, except in the case of a posthumous heir being born.

When land is given to "the heir" of a person, the heir claims not by descent from his ancestor, but by purchase from the donor, the word "heir" being used as a *descriptio personæ;* and hence he is called heir by limitation, as opposed to the heir in fact, heir in deed (or actual heir). If a testator devises land to his own heir at law, the latter takes as devisee and not as heir.

"Right heir" seems to mean sometimes heir at common law; and sometimes rightful heir, as opposed to a supposititious heir. *Hæres astrarius* is used in the old books to denote an heir apparent to whom his ancestor has conveyed the inheritance in his lifetime, and he is so called from *astre* (modern French *âtre*), a hearth, used figuratively for a dwelling-house. As to mesne heirs, see SEISIN.

Co-heirs are two or more persons who take by the same descent. Thus, if a tenant of gavelkind land leaves several sons, they take as co-heirs. So if a tenant of ordinary land leaves no son and several daughters, they take his land as co-heiresses. See COPARCENERY.

An heir apparent is a person who will be heir to his ancestor if he survives him. He is not heir in the proper sense of the word until after the death of his ancestor, for "*nemo est hæres viventis.*" Formerly "heir apparent" was applied to the nearest living heir, for he would be heir if the ancestor died immediately, while a distinction was taken between an heir apparent who must be heir in any event ("certain and perdurable heir apparent"), and an heir apparent whose claim is liable to be defeated wholly or partially by the birth of a nearer heir or co-heir. At the present day, however, "heir apparent" means him who, if he survives his ancestor, must certainly be his heir, *e.g.*, an eldest son in ordinary cases, while any other heir is called an heir presumptive, because his claim to inherit is liable to be defeated by the birth of a nearer heir.

An heir apparent or presumptive is an immediate heir, that is, he is the nearest blood relation capable of inheriting to his ancestor. All other blood relations capable of inheriting are called remote heirs: thus A's

eldest son is his immediate heir, and his younger son is his remote heir.

"Heir" is also used as a word of limitation to denote the quality of an estate of inheritance on its creation. Formerly an estate in fee could not be created by deed without the words "and his heirs" following the name of the grantee. "Tenant in fee simple," says Littleton, "is he which hath lands or tenements to hold to him and his heirs for ever." Now, since 1881, an estate in fee can be created by adding the words "in fee simple" to the name of the grantee. But either the one form of words or the other is necessary to create a fee simple: if land is conveyed to A simply, A merely takes an estate for life. Similarly, an estate tail is properly created by the words "and the heirs of his body" following the name of the grantee. In wills and agreements words of inheritance are not required. (See FEE; ESTATE TAIL; WORDS OF LIMITATION.)

"Heir" and "heirs" are used in a popular sense, especially by testators, to signify the eldest son, or all the children, or the devisee or the next of kin of a given person. The meaning to be given to the word is a question of construction, on which several rules have been laid down.

See EXPECTANT HEIR; BASTARD; MONSTER.

Heir Apparent. The eldest son of the sovereign, or the eldest son of an eldest son of the sovereign who has died during the life of the sovereign, is the heir apparent of the Crown. No female descendant of the sovereign can ever be the heiress apparent, for, in contemplation of law, her right to succeed may always be defeated by the birth of an heir apparent or, unless she be the eldest living daughter of the sovereign, by the birth of another princess with a prior right. Thus the Princess Victoria was heiress presumptive to William IV., and the proclamation issued upon her accession expressly saved the rights of any posthumous child of William IV.

The management and control of the establishment of the heir apparent is regulated by the Heir Apparent's Establishment Act, 1795. This Act was really passed in view of the financial embarrassments of the then Prince of Wales. But the preamble sets out that "it is expedient to establish a regular course of payment of all just demands which may hereafter be made upon any future heir apparent of the Crown for any debt to be incurred and that accumulation of debt may be prevented." It provides that debts due by the heir apparent are void unless a claim be delivered in writing within ten days after the expiration of the quarter in which they are incurred (s. 7), and that no action lies by a creditor against the heir apparent in his own name, but that proceedings may be taken against the proper officer of his household within three months of the delivery of the claim and that payment, if recovered, is a charge upon the revenues in the hands of the proper officer (ss. 8, 9). This is the only immunity from legal proceedings enjoyed by the heir apparent.

Heiress is a female heir. See HEIR.

Heir is nomen collectivum (1 *Vent.* 215). The word heir is collective: and so, said Lord Hale, a devise to one for his life and then after his decease to his heir was held to be a grant in fee, just as if the grant had been to him and his heirs. Compare HÆREDUM, ETC.

Heirlooms are such goods and personal chattels as, contrary to the nature of chattels, go by special custom to the heir or devisee of the owner, along with the inheritance, and not to his executor. It is said that the owner of an heirloom cannot dispose of it by will so as to sever it from the inheritance, although he may dispose of it during his lifetime. Heirlooms in the strict sense are rare. A patent creating a dignity is the most usual case: such a thing as an ancient horn, where land is held by cornage (q.v.) is another instance. When personal property is left by will, or settled so as to descend like a proper heirloom so far as the rules of law allow, it is called an heirloom by devise or settlement, or a *quasi*-heirloom. See CHATTELS. As to the power of a tenant for life to sell heirlooms by order of the Court, see the Settled Land Act, 1882, s. 37.

"Heirs and Assigns." Regarding the effect of these two words when used in a deed see ASSIGN.

Heirship is the quality or condition of being heir, or the relation between the heir and his ancestor.

Hell. In the seventeenth century this was a popular name for a debtors' prison, and more particularly for a prison attached to the Court of Exchequer Chamber, in which at some earlier date the king's debtors had been confined.

Helsing. This is stated by Jacob to have been an Anglo-Saxon coin "equivalent to our half-penny." It does not, however, appear to be known to numismatists.

Hempholme. See CHILTERN HUNDREDS.

Henedpenny. A customary payment mentioned in a charter of Edward III., the precise nature of which is uncertain. It has been

surmised to have been a payment in lieu of hens or eggs; while on the other hand it is suggested that it is a form of HEADPENNY; and the latter explanation seems the more probable.

Hengen. A prison; see Leg. Hen. 1. c. 65.

Henry I., Laws of. So called because they commence with a charter of that monarch. They were compiled probably about the year 1118 and are an attempt to compile a general statement of the principles of English law. They are printed in Thorpe's *Ancient Laws of England*, i. 497-608.

See Stubbs, *Lectures on Early English History*.

Heralds; Heralds' College. There are nine English heralds. The three chief heralds are termed *Kings of Arms*, and are known as *Garter, Clarencieux, and Norroy*: the other six are entitled merely Heralds and are known as *Lancaster, York, Somerset, Chester, Richmond*, and *Windsor*. They, together with four minor officials known as *Pursuivants* (or messengers), and respectively entitled *Rouge Croix, Portcullis, Bluemantle*, and *Rouge Dragon*, make up the College of Arms.

The heralds are all of comparatively recent origin. *York, Lancaster, Chester*, and *Windsor* originated in the reign of Edward III., *Garter* in that of Henry IV., *Clarencieux* and *Richmond* in that of Edward IV.; *Norroy* appears to be first mentioned in 1485; and *Somerset* was created by Henry VIII.

Garter is the principal herald: he was anciently known as *Rex Armorum Anglicanorum Indefinite*. *Clarencieux* (or *Surroy*, that is to say *South Roy*) was known as *Rex Armorum Partium Australium*: he acted for England south of the Trent. *Norroy* (*North Roy*) acted for England north of the Trent, and was known as *Rex Armorum Partium Borealium*.

Of the *Pursuivants, Rouge Croix* is the most ancient and the date of his origin is uncertain. *Blue Mantle* is believed to date from the reign of Edward III.; and the offices of *Rouge Dragon* and *Portcullis* were founded by Henry VII.

The College of Arms, otherwise and better known as the Heralds' College, was incorporated by Richard III. in 1483. Its present charter is that granted by Philip and Mary in 1556. It is under the jurisdiction of the Earl Marshal (q.v.). It had a jurisdiction as to armorial bearings and such matters, rather overlapping that of the Court of Chivalry (q.v.), with which it came into conflict; and it had functions in connection with the funerals of the nobility: but in 1692 it was decided that the College could not prevent undertakers from marshalling funerals or coachbuilders from painting armorial bearings "contrary to heraldry." Its present functions are entirely extra-legal.

A *Gloucester King of Arms* and a *Hanover* herald were created by George I. They were never part of the College of Arms, and their offices are now vacant or non-existent.

Herbage is the same as vesture (q.v.).

Herb Beer. "Means the beverage usually known as herb beer or botanic beer, but does not include ginger beer" (Finance Act, 1916, s. 11 (2)). An excise duty at the rate of twopence a gallon and a customs duty at the same rate are payable upon herb beer (*ib.* s. 11 (1)).

Herdwick. A pasture or sheepwalk; literally land under the care of a herd. Compare BAILIWICK.

Hereditament. "Whatsoever," says Coke, "may be inherited is an hereditament": in other words, when a right is of such a nature that on the death of its owner intestate it descends to his heir, it is a hereditament. The term includes a few rights unconnected with land, but it is generally used as the widest expression for real property of all kinds, and is therefore employed in conveyances after the words "lands" and "tenements" to include everything of the nature of realty which they do not cover.

The principal division of hereditaments is into those which lie in livery and those which lie in grant (see GRANT; LIVERY). Hereditaments lying in livery are those whereof livery of seisin can be made, such as lands, houses, etc.: in other words, they are visible and tangible objects, and are hence also called corporeal hereditaments. Hereditaments lying in grant are those whereof no livery of seisin can be made because they are mere rights, but they pass by deed of grant without more. They include (a) reversions, remainders and other executory interests in land; and (b) incorporeal hereditaments, namely, advowsons, tithes, easements, profits *à prendre*, services, rents, annuities, offices, dignities, franchises, etc. Some writers include reversions and remainders among incorporeal hereditaments, and distinguish incorporeal hereditaments in the strict sense by calling them hereditaments purely incorporeal: but the classification is neither correct nor convenient.

Another division of hereditaments is into real, personal and mixed. Real hereditaments are lands and tenements. A personal heredita-

ment is one which concerns neither lands nor tenements, such as an annuity granted to a man and his heirs. A mixed hereditament is partly real and partly personal, as, says Coke, where "the king created an earl of such a county or other place, to hold that dignity to him and his heires, this dignity is personall, and also concerneth lands and tenements."

Hereditaments are also either legal, namely, such as descend to the heir by the rules of the common law, as in the preceding examples, or equitable, namely, those rights which exist only by the rules of equity; thus an equity of redemption (q.v.), and the interest of an heir in money directed to be laid out in the purchase of land, are equitable hereditaments. (See CONVERSION.)

Coke says that the franchises of chase, warren, and park are collateral hereditaments and not issuing out of the soil like rights of common, "and therefore if a man hath a chase in other men's grounds, and after purchase the grounds, the chase remaineth"; in other words, it is not extinguished by unity of seisin, being a privilege distinct from the land.

An entire hereditament is one, the parts of which are connected together, as opposed to several hereditaments, which are unconnected with one another; as if a man has two estates which are separated from one another by land belonging to other persons. Entire hereditaments, again, are either divisible or indivisible. Thus a piece of land or a rent-charge is divisible, while an advowson or a common *sans nombre* cannot be divided, the former from its nature, the latter because its division would increase the charge to the owner of the commonable land. An advowson, however, may in effect be divided between co-parceners, for they may agree to present by turns.

Hereditament (low Latin *hereditamentum*, from *hereditas*, inheritance) seems to be a comparatively modern word in English law: the old word is *heritage*.

Hereditary Revenues of the Crown. See CIVIL LIST; DEMESNE.

Hereditas. In the time of Glanvil, land held of a superior lord was divided into the *hereditas* and the *questum*, the *hereditas* being that which had descended to him, and the *questum* being any which had been granted to him personally. Only a "reasonable part" of the *hereditas* could be alienated by the tenant, and that could be alienated only for proper purposes and by gift *inter vivos*. With regard to the *questum*, the power of alienation *inter vivos* appears to have been unrestricted. See FRATRIAGIUM.

Heregeld. Used in Anglo-Saxon times as meaning either danegeld (q.v.) or the tax imposed to defray that payment.

Heresy is an ecclesiastical offence, consisting in the holding of a false opinion repugnant to some point of doctrine clearly revealed in Scripture, and either absolutely essential to the Christian faith, or at least of most high importance. It was formerly punishable by death, but the writ *de hæretico comburendo* was abolished by the statute 29 Car. 2, c. 9, and it is now punishable only by excommunication or other censure (q.v.) See EXCOMMUNICATION. See also APOSTASY; BLASPHEMY.

Heriots are of three kinds,—heriot service, suit heriot, and heriot custom.

Heriot service can only exist as incident to a freehold tenure created before the Statute of *Quia Emptores* (q.v.). It consists in the right of the lord to the best beast of a tenant dying seised of an estate of inheritance, and is recoverable by seizure or distress. Hence it is said to lie both in prender and in render: see those titles.

Suit heriot is the right to some chattel of a deceased tenant, reserved on a grant or lease of freehold lands made in modern times. It is not confined to the best beast or to the case of a tenant dying seised of an estate of inheritance. A suit heriot being a species of rent, the lord must either distrain or bring an action for it and cannot seize it.

Heriot custom is usually found in copyholds, though it also occurs in freeholds held of a manor in which the freeholders are subject to a set of customary rules. It is not recoverable by distress except by special custom, and is in other respects entirely regulated by local custom; thus it may be confined to the second best beast, or to animals of a particular kind, or to "dead goods." A heriot custom may also be due on alienation as well as on death.

In many cases heriots have been commuted for money payments. Now, under the Copyhold Act, 1894, s. 2, any lord or tenant of land subject to any heriot, whether commuted or not, may require it to be extinguished upon the terms provided by the Act.

The word "heriot" is a form of the Norman French *heriet*, late Latin *heriotum*, from Anglo-Saxon *hergeata*, *heregeatve*, an implement of warfare, because the lord on the death of his tenant was entitled to a certain

number of the tenant's horses and arms, varying according to his military rank, or, in the case of a villein, to his best beast. Originally heriot and relief (q.v.) were spoken of as synonymous, but after the Conquest "relief" became appropriated to free tenants and "heriot" to villeins.

See SERVICE; MORTUARY.

Heroin. See DRUGS, DANGEROUS.

Herring Silver. Anciently this meant a yearly payment made by tenants of a religious house in commutation of the service of providing herrings for the monks.

Hexham. This was anciently sometimes described as a county palatine; but the statute 14 Eliz. c. 13, declared that it was merely part of the county of Northumberland.

Hidage. A tax upon every hide of land other than that held by knight service, corresponding to the tallage (q.v.) or talliage levied off towns. The statute *De Tallagio non Concedendo* (q.v.) was wide enough to cover hidage as well as the other taxes expressly mentioned in it.

Hide of land is the same as a ploughland or plowland (q.v.).

Hide and Gain. This, before the time of Coke, was used as meaning arable land.

High Bailiff. See BAILIFF.

High Commission. The statute 1 Eliz. c. 1, restored all ecclesiastical jurisdiction to the Crown, and empowered the Queen to execute that jurisdiction by commissioners to be appointed under the great seal; and the power of the commissioners, when appointed, was made to extend to all heresies, schisms, abuses, and offences whatsoever which fell under the cognizance of the spiritual authority. After various temporary commissions had been appointed under this Act, a more permanent commission was appointed under it in 1583, during the primacy of Archbishop Whitgift. This last-mentioned commission was the Court of High Commission, commonly so called. It consisted of forty-four commissioners, twelve of whom were bishops, other twelve of them privy councillors, and the rest either clergymen or laymen, all which commissioners were directed and empowered to inquire (by jury or by witnesses, or by other means of trial) into all offences or misdemeanours against or contrary to the Acts popularly called Acts of Supremacy (1 Eliz. c. 1) and Uniformity (1 Eliz. c. 2), including thereunder the cognizance of all heretical opinions, seditious books, contempts, conspiracies, false rumours, slanders, etc.; also, incests, adulteries, and the like; also, absence from church, etc. And any three of the commissioners, of whom one was to be a bishop, were empowered to examine suspected persons on oath and to punish the refractory by spiritual censures, fines, or imprisonments, at their discretion, with power also to amend the statutes of schools, colleges, etc.

The procedure of the Court was wholly founded on the canon law, and the accused was subjected to a series of interrogatories of an exhaustive and searching character, which he was compelled to answer on oath (called the oath *ex officio*) without evasion, not being allowed the benefit of the common law maxim, that no one is bound to criminate himself.

This Court met with the same fate, in the same year, from the same causes, and by the same Parliament, as the Court of Star Chamber and the Council of the North (see those titles). The statute abolishing the High Commission was the 16 Car. 1, c. 11.

High Constable. See CONSTABLES; CONSTABLE, LORD HIGH.

High Court of Admiralty was a Court of maritime jurisdiction, anciently styled the Court of the Lord High Admiral (see ADMIRAL). It had two jurisdictions, one as an Instance Court, in which originally not only civil but also criminal suits of a maritime nature were decided, and the other as a Prize Court. The same judge presided over both Courts, but by virtue of separate commissions.

By the Judicature Acts, 1873-5, the jurisdiction of the Admiralty Court was transferred to the Probate, Divorce and Admiralty Division of the High Court (q.v.).

See ADMIRAL; ADMIRALTY DIVISION; CAPTURE; PRIZE COURT.

High Court of Justice. See SUPREME COURT.

Higher and Lower Scale. In the practice of the Supreme Court of Judicature before the present Rules of the Supreme Court came into operation in 1883, there were two scales regulating the fees of Court and the fees which solicitors were entitled to charge. The lower scale applied (unless the Court otherwise ordered) to the following cases: all causes and matters assigned by the Judicature Acts to the Queen's Bench or the Probate, Divorce and Admiralty Divisions; all actions of debt, contract or tort; and in almost all causes and matters assigned by the Acts to the Chancery Division in which the amount in litigation was under £1,000. The higher scale applied in all other causes and matters, and also in actions falling under one of the above classes, but in which the principal relief sought to be obtained was an injunction. Now under

Ord. 65, r. 8, only the lower scale, as set out in Appendix N (Part II., Div. I.) to the rules, may be charged, unless (r. 9) the Court or a judge or a taxing master, acting under directions, allows costs on the higher scale as set out in the same Appendix, or unless (r. 10) costs are being taxed as between solicitor and client.

Highness. This, in its Latin form of *celsitudo*, was the title of the English King from the twelfth century. Subsequently the English form came into use and was used exclusively until the reign of Henry VIII., who assumed the title of *Majesty*. Then for about a hundred years *Majesty* and *Highness* were used alternatively: and, finally, during the reign of James I., the title of *Majesty* came into exclusive use for the King, *Highness* being appropriated to his children. Now sons, daughters, brothers and sisters, uncles and aunts, and grandchildren (being the children of sons), are entitled *Royal Highness*, while nephews, nieces and cousins, and grandchildren (being the children of daughters) are entitled *Highness* merely.

The title of *Highness* is also accorded to the great Indian independent rulers.

High Seas include the whole of the seas or open salt water on the globe, beyond the distance of three miles from the coast of any country. The country must be one recognising the obligations of international law, as the three-mile limit is an arbitrary creation of that law.

In the *Franconia Case* (q.v.), it was decided by a majority of seven against six judges, that the English criminal Courts had no jurisdiction to convict a foreigner for an offence committed on the open sea within a distance of three miles from the English coast. Two of the majority were also of opinion that the English Parliament had no power to legislate with reference to the portion of the open sea within three miles, so as to give the English Courts jurisdiction over offences committed there. The rest of the majority, however, considered that the English Parliament had this power The decision, therefore, merely went on the ground that legislation was necessary to give the English Courts jurisdiction, and that no statute having that effect had been passed. In accordance with this view, the Territorial Waters Jurisdiction Act, 1878, was shortly afterwards passed. See TERRITORIAL WATERS.

The high seas are common to all nations, and no part of them can become the property of any one State. They are, therefore, open to the navigation, fishery and commerce of all the world, and no nation has the right to exercise civil or criminal jurisdiction over the ships of other nations while passing over the high seas. The Courts of a country may however exercise jurisdiction over foreign ships in respect of injuries committed by them on the high seas, if they subsequently come within the territorial waters of that country: and the English Courts have in fact jurisdiction in such cases under the Merchant Shipping Act, 1894, s. 688. As regards the right of fishing on the high seas, where a particular locality is habitually frequented by fishermen of different countries, and a custom is established regulating the mode and time of fishing, and such matters, the custom is binding on all those who frequent the locality.

The bed of the high seas appears to follow the same general rule, that it is common to all nations. There is, however, this difference, that it is capable of permanent occupation, and it would consequently appear that if any State keeps uninterrupted and exclusive possession of a portion of the bed of the high seas, for a certain length of time, the State thereby acquires a right to it as against all others, by analogy to the doctrine of possession.

See CHAMBERS OF THE KING; PIRACY.

High Steward. Formerly there were, in the Liberty of Westminster, officers known as the High Steward and Deputy Steward; and in certain English cities the title of High Steward is still borne by an honorary official.

At Oxford, and also at Cambridge, there is a High Steward of the University, each of whom is always a person of rank and distinction, who performs no active duties. Theoretically, any scholar or privileged member of the University of Oxford can, under a charter of Henry IV., as confirmed by the statute 13 Eliz. c. 29, be tried before a Court presided over by the High Steward or his deputy; but this right has been in abeyance since the eighteenth century. As to the other exceptional jurisdiction of the University of Oxford, see UNIVERSITY COURTS.

See LORD HIGH STEWARD; STEWARD.

High Treason. This formerly meant such treason (q.v.) as was not *petit* treason; but, since the abolition of the latter offence by the statute 9 Geo. 4, c. 31, s. 2, what was formerly called high treason is called treason only.

The ancient sentence pronounced upon persons convicted of high treason was "that they should be drawn on a hurdle to the place of execution and there be hanged by the neck but not until they were dead, but that they should be taken down again, and that while

they are yet alive their bowels should be taken out and burnt before their faces, and that afterwards their heads should be severed from their bodies, and their bodies be divided into four quarters and their heads and quarters to be at the King's disposal" (Treason Act, 1814 (54 Geo. 3, c. 146), preamble). The same Act then went on to enact that in any future case where a person had to be sentenced for high treason, the sentence should be: "that such person shall *be drawn on a hurdle to the place of execution and* be there hanged by the neck until such person is dead; *and that afterwards the head shall be severed from the body of such person, and the body, divided into four quarters, shall be disposed of as His Majesty and his successors shall think fit.*" The words in italics were repealed by the Forfeiture Act, 1870, s. 31.

Long before 1814 every person executed for high treason had, in practice, been hanged by the neck until he was dead before the further parts of the ancient sentence were carried out. Compare BURNING TO DEATH. See CAPITAL PUNISHMENT.

Highway. This is a passage which is open to all the King's subjects; thus public rivers are in law considered as highways. A highway need not necessarily be a thoroughfare. The interest of the public in a highway consists solely in the right of passage over it; thus a highway over land (which is what is usually meant by a highway), gives the right of walking, driving and riding, unless it be only a footway (q.v.), or a horseway (q.v.). The soil and freehold over which that right of way is exercised may be and generally is vested in a private owner, who may maintain an action against persons who infringe his rights therein, as for instance by permitting cattle to depasture there. A way ceases to be a highway when all access to it has been legally stopped up, and the right to the surface then reverts to the owner of the soil.

The unlawful stoppage or obstruction of a highway is a public nuisance.

The charabanc, the lorry and other ponderous vehicles may be excluded from any specified highway pursuant to s. 7 (4) of the Roads Act, 1920.

See CARTWAY; DEDICATION; AD QUOD DAMNUM; WAY; NAVIGATION; NUISANCE; TRANSPORT, MINISTRY OF; ROAD BOARD; ROAD FUND.

Highway Board. See WAYWARDENS.

Hilary. See SITTINGS; TERM.

Hinde Palmer's Act. The popular title of the Administration of Estates Act, 1869. See ASSETS: DEBTS.

Hire-purchase Agreement. An agreement by which the owner of a chattel lets it out on hire and undertakes that it shall become the property of the hirer when the hirer has paid the last of a certain number of payments specified in the agreement. Until such last payment has been made no property in the chattel passes to the hirer; and the agreement therefore does not need to be registered as a bill of sale (q.v.).

Hiring Fair. See STATUTE FAIR.

Hoastmen. From time immemorial there existed in the town of Newcastle-on-Tyne a guild of hostmen, or ostmen, through which "ostmen," or strangers, conducted the purchase of coal and other commodities, and to which certain dues were payable in respect of such purchases. It received a charter of incorporation: and s. 12 of the statute 21 Jac. 1, c. 3, provided that none of the provisions against monopolies which were contained in that Act should affect the rights and privileges of the "Governors and Stewards and Brethren of the Fellowshippe of the Hoastmen of the Town of Newcastle uppon Tyne." Now, however, the "Company of Hoastmen" is merely a body membership of which is a coveted local civic distinction: it has no more to do with the coal trade than the Company of Merchant Taylors in the City of London has to do with the making of clothes.

Hobbes. Thomas Hobbes was born at Malmesbury in 1588 and died in 1679. He wrote *De Cive*, *The Leviathan*, and numerous other works, in which theoretical questions of law and government are discussed.

Hobhouse's Act. The popular title of the Vestries Act, 1831.

Hockettor. Coke (3 *Inst.* 175) says that this meant a "knight of the post" (q.v.). The Statute of Rageman (q.v.) speaks of "*hocketтours ou barretours*" (that is to say, common barrators—see BARRATRY), as if they were *ejusdem generis*.

Hock-tide; Hock Monday; Hock Tuesday. Hock-tide anciently meant the second Monday and the second Tuesday after Easter Day; and the two days were known as the Hock Days. Hock Tuesday was also known as Binding Tuesday (q.v.), because on that day women tied up men with cords to exact contributions, just as men tied up women on Hock Monday, all this being part of the Hock-tide festivities which anciently took place.

Hock Tuesday was anciently one of the half-yearly days for the payment of rent: Michaelmas was the other.

Hogarth's Acts. The popular title of the

Engraving Copyright Acts, 1734 and 1766, the first of which had been passed at the instance of William Hogarth and other artists. Both were repealed by the Copyright Act, 1911: see COPYRIGHT.

Hogshead. This measure is not known to the law. Ordinarily it means one containing fifty-four gallons: but the number of gallons in the hogshead varies when it is used as a measure for different kinds of wine or for brandy.

Holder in Due Course. The meaning of this expression is given in s. 29 of the Bills of Exchange Act, 1882.

Holding. See AGRICULTURAL HOLDINGS ACTS.

"Holding Out." See PARTNERSHIP, II.

Holding Over is where a tenant under a lease continues in possession of land after the determination of his tenancy. In ordinary cases the effect of holding over is either to make the tenant liable to an action for use and occupation (q.v.), or to continue the tenancy against his wish.

By the Landlord and Tenant Act, 1730, s. 1, where a tenant for term of life or years wilfully holds over the land after the determination of the term and after demand and notice in writing by the landlord for the delivery of the possession, the tenant is liable to pay damages at double the yearly value of the land.

By the Distress for Rent Act, 1737, s. 18, a tenant who holds over after giving notice to quit, is liable to pay double rent for the time he continues in possession.

Holiday; Holyday. See FEASTS; BANK HOLIDAY.

Holland. See RIDING.

Holloway Prison. Used as a debtors' prison under the Queen's Prison (q.v.) Discontinuance Act, s. 12, since the abolition in 1870 of Whitecross Street Prison (q.v.).

Holy Orders. See BISHOP; DEACON; PRIEST; DEGRADATION; DEPOSITION; DEPRIVATION.

Neither degradation nor deposition deprives one in Holy orders of his sacerdotal *status*, which, amongst other things, precludes him from being elected to the House of Commons, although, if a peer, he may sit in the House of Lords. Down to 1870 the rule was "once a priest; always a priest." But under the Clerical Disabilities Act, 1870, anyone in priest's or deacon's orders who has resigned every preferment held by him, becomes for all legal purposes a layman if he has executed, enrolled in the Chancery Division, and delivered to his bishop a deed of relinquishment in the form prescribed by the Act, and if at the expiration of six months after he has delivered the deed to the bishop, he requests that it be enrolled in the registry of the diocese.

Holy Thursday. Ascension Day (q.v.). The name is applied also to the Thursday preceding Good Friday, which is also known as Maunday Thursday.

Holywarkfolk. See HALIWERFOLK.

Homage.—I. Homage signifies the free tenants of a manor assembled in the Court Baron. They are sworn to make their presentments with impartiality, and are hence sometimes called the homage jury. But the attendance of free tenants at the Court Baron has become so unfrequent that the term "homage" is more commonly applied to the copyholders attending at the customary Court. The duty of a homage jury is to make presentments of all things done within the manor to the prejudice of the lord or tenants, and to recommend whatever may appear to be advantageous to the lord, and not injurious to the tenants. See PRESENTMENT.

II. Formerly homage signified what Littleton calls "a most honourable and humble service of reverence," which every free tenant for an estate in fee simple or fee tail was bound to perform to his feudal lord; it was so called because in doing homage in ordinary cases the tenant said to his lord "I become your man [Norman French *home*] of life and limb." Homage created an obligation of assistance by the tenant to his lord, and of protection by the lord to his tenant. Homage was of several kinds. Liege homage was without any saving or exception of the faith due by the tenant to anyone else, as where a tenant did homage to the king. Simple homage, or *homagium non ligeum*, was performed by a subject to a subject, as in ordinary cases, where the tenant promised to be faithful to his lord saving the faith he owed to the king. Homage auncestral (*homagium antecessorium*) is, says Littleton, "where a tenant holdeth his land of his lord by homage, and the same tenant and his ancestors, whose heire he is, have holden the same land of the same lord and of his auncestors, whose heire the lord is, time out of memorie of man, by homage, and have done them homage. And this is called homage auncestrell, by reason of the continuance which hath beene by title of prescription in the tenancie in the blood of the tenant, and also in the seignorie in the blood of the lord." The peculiarity of homage auncestral was that it imposed on the

lord the duty of warranty (q.v.) and acquittal (q.v.) towards his tenant.

Homage in the sense of service was abolished by the statute 12 Car. 2, c. 24.

After a newly-elected bishop has been enthroned, he is introduced into the presence of the Sovereign, and on his knees does homage for the temporalities of his see, taking a solemn oath of fidelity and of acknowledgment that he holds the temporalities of the Crown.

Homage in the sense of service is derived from the Norman French *homage*, from *home*, a man, because the tenant became the lord's man. Homage in the sense of the suitors at a Court Baron is said to be of the same derivation, because the suitors were those who had done homage; this derivation is doubtful.

See FEALTY; LAY INVESTITURE.

Homager. One who did, or was bound to do, homage to another.

Homagio recipiendo, De. Anciently this was a writ which lay for a tenant to compel the lord to receive the homage of the tenant.

Homagio respectuando, De. An ancient writ commanding the escheator (q.v.) to deliver to the heir seisin of lands held of the king, notwithstanding that homage (q.v.) had not been done, upon the condition that the heir, when of age, did homage or agreed with the king for the respiting thereof.

Homagium repellit perquisitum (*Gilb. Ten.* 142.) (Homage precludes possession.) One of the maxims on which was based the rule set out under NEMO POTEST ESSE TENENS, ETC.

Homagium reddere. This meant to renounce, not to render, homage. See Bracton Lib. 2, c. 35.

Home ne serra puny pur suer des briefes en court le roy, soit il a droit ou a tort (2 *Inst.* 228). (A man shall not be punished for suing out writs in the king's court, whether he has or has not a cause of action.) Cited by Coke in connection with the statement that no action *de scandalis magnatis* (see SCANDALUM MAGNATUM), or at common law lay against one who brought a groundless appeal of felony against a peer.

Home Office. The Government office of which the Secretary of State, known as the Home Secretary, is the head. See SECRETARY OF STATE.

Home Trade Passenger Ship. This expression includes "every home trade ship" (q.v.) "employed in carrying passengers" (Merchant Shipping Act, 1894, s. 742).

Home Trade Ship. This expression "includes every ship employed in trading or going within the following limits; that is to say, the United Kingdom, the Channel Islands, the Isle of Man, and the Continent of Europe between the river Elbe and Brest inclusive" (Merchant Shipping Act, 1894, s. 742). Any ship trading outside those limits is a foreign-going ship (q.v.).

Homicide is where one human being kills another.

Homicide is unlawful or felonious—

(*a*) When death is caused by an act done with the intention to cause death or bodily harm, or which is commonly known to be likely to cause death or bodily harm, and when such act has no legal justification or excuse (see MURDER):

(*b*) When death is caused by an omission, amounting to culpable negligence, to discharge a duty tending to the preservation of life, whether such omission is or is not accompanied by an intention to cause death or bodily harm (see MURDER; MANSLAUGHTER):

(*c*) When death is caused accidentally by an unlawful act (see MANSLAUGHTER).

Homicide is excusable when the person by whom it is committed is not altogether free from blame, though it is not of such a kind as to make him criminally responsible. Excusable homicide is either *per infortunium*, by misadventure, as where a person driving a carriage with due care accidentally kills anyone, or homicide *se et sua defendendo*, that is, in defence of one's self or property upon some sudden affray considered by the law as in some measure blameable. (See CHANCE-MEDLEY).

Homicide is justifiable where no blame whatever attaches to the person killing; as in case of the execution of a malefactor by legal warrant, or where a constable or other officer in the execution of his duty, in either a civil or criminal case, kills a person who assaults or resists him, or where one person kills another in defending himself or his property against an attempt to commit a felony with force, *e.g.*, murder, robbery. Formerly a person who committed excusable homicide was liable to be tried and punished, but this liability was abolished by the Offences against the Person Act, 1861, s. 7, so that the distinction between excusable and justifiable homicide is no longer of practical importance. Formerly "homicide" meant manslaughter. See BIRTH, CONCEALMENT OF.

Homicidium vel hominis cædium, est hominis occisio ab homine facta (3 *Inst.* 54). Homicide or the slaughter of a man is the killing of a man by a man. There never was

such a word as *cædium*, though there is the word *cædere*, to kill or slaughter.

Homine capto in withernam. This, said Jacob, in 1739, "is a writ for the apprehending of one who has taken any man or woman and conveyed him or her out of the country, so that they cannot be replevied by law."

Homine eligendo ad custodiendum peciam sigilli pro mercatoribus editi. A writ anciently directed to a corporation commanding it to elect a keeper of "one part of the seal appointed for Statutes Merchant" in the place of a keeper deceased.

Homine replegiando. A writ which formerly lay to bail out of prison a man other than one in prison by order of the king or of the judges or for crime.

Homologation is the same thing as estoppel in pais (q.v.).

Homo potest esse habilis et inhabilis diversis temporibus (5 *Rep.* 98). (A man may be capable and incapable at different times.) This is still law: see LUCID INTERVAL.

Honor means (i) a seignory *in capite* of which several inferior lordships or manors depend; and (ii) the land or district included in the seignory. An honor cannot be created since the statute *Quia Emptores*, except by Act of Parliament: for an instance of such creation, see the statute 33 Hen. 8, c. 37, relating to the Honor of Ampthill. See IN CAPITE; MANOR; TENURE).

Honor Courts. These were courts baron and courts leet held in an honor (q.v.).

Honorary Freemen. See FREEDOM OF A BOROUGH.

Honorary Services. A designation applied to the services incident to tenure in grand serjeanty (q.v.), because they were generally connected with some title of honour.

Honorary Trustees. A synonym for trustees to preserve contingent remainders (q.v.).

Honoris respectum. See CHALLENGE.

Honour. The drawee of a bill of exchange is said to honour it when he accepts it. The acceptor of a bill, or the maker of a note, is said to honour it when he pays it. (See BILL OF EXCHANGE). As to acceptance for honour, see ACCEPTANCE.

"His Honour Judge Robinson," or as the case may be, is the designation of a County Court judge (see Order in Council of 7th August, 1884, published in the *London Gazette* of 8th August, 1884, at p. 3569), and also of a retired County Court judge (Royal Warrant, dated 8th December, 1919).

Honour, Court of. See COURT OF HONOUR, etc.

Honourable. This title is applied to the younger sons, but to none of the daughters, of earls, and to all the children of viscounts and barons; to all past and present Maids of Honour to the Queen; to all Justices of the High Court; to the Scottish Lords of Session; to the Lord Provost of Glasgow during office; and to members of Governments and of Legislative Councils in India and the Colonies. Where this title is applicable to the son of a peer, it is applied also to his wife or widow. These uses of the word are officially recognised.

Horn with Horn. The promiscuous feeding of bulls and cows upon the same common was called "horn with horn," or "horn under horn." The right to this is possessed by persons entitled to common (q.v.) *causa vicinagii*.

Horne Tooke's Act. The popular title of the statute 41 Geo. 3, c. 63, which was passed for the express purpose of making it clear that Mr. Horne Tooke, being in Holy orders (q.v.), could not be a member of the House of Commons.

Hors de son fee. Literally, "out of his fee." In an action (by one claiming to be the owner in fee) for rent or services out of land, if the defendant could prove that the land in question was "without the compass of the fee" of the plaintiff, then the action necessarily failed. The plea upon which evidence of such fact could be given was termed an exception (q.v.).

Horse. The law as to horses differs from that relating to other chattels chiefly in this respect, that by the statutes 2 & 3 Ph. & M. c. 7, and 31 Eliz. c. 12 (see also the Sale of Goods Act, 1893, s. 22 (2)), the sale of a stolen horse in market overt (q.v.) does not pass the property therein, unless the requirements of those Acts for the ensuring of publicity are complied with, and unless, in addition, the owner fails to put in a claim within six months after the horse was stolen; if he proves his case, and tenders the purchaser the price paid by him, he is entitled to have his horse back again. See RACE COURSE; RESTITUTION; REVESTING; WAGERS; DRUGGING ANIMALS; KNACKERS.

Horse Breeding. The Horse Breeding Act, 1918, empowers the Ministry of Agriculture and Fisheries to grant, refuse, suspend, or revoke licences for stallions to be exhibited or travelled for stud purposes, and makes it an offence (punishable with a penalty not exceeding £20), to use such stallion without such licence.

Horseflesh. The Horseflesh Regulation, etc., Act, 1889, prohibits the sale of horse-

flesh or the flesh of asses or mules for human food elsewhere than in a shop which exhibits a notice, in letters not less than four inches high, that horseflesh is sold there.

Horseway. A track which is open to persons on horseback and also to persons on foot. Like a footway (q.v.) it may be either public or private. See BRIDLE-PATH; CARTWAY; PACKWAY.

Hospital. In law a hospital is an eleemosynary corporation (q.v.), intended for the education of impecunious scholars or for the relief, whether by way of giving food and shelter or by way of medical treatment, of the indigent poor. Many hospitals are incorporated by royal charter: but the statute 39 Eliz. c. 5, empowers anyone seised of an estate in fee simple to found a hospital, which must be endowed with lands, etc., of the value of not less than £10 a year, may hold lands of the value of not more than £200 a year, and is to be governed as the founder directs.

Hospitallers; Hospitalarii. The English names for the Knights of St. John of Jerusalem, a religious order founded in the twelfth century by the Pope, which had monasteries throughout Europe. It built a hospital, or hostel, for pilgrims at Jerusalem. On the suppression of the Knights Templars in 1314, the bulk of their property was transferred by the Pope to the Hospitallers. In the reign of Edward III. the Hospitallers demised the Temple, or monastery in London of the Templars, to certain lawyers, who subsequently formed themselves into the societies known as the Inner Temple and the Middle Temple (see INNS OF COURT): the other estates of the Templars were held by the Hospitallers until 1540, when the order was dissolved and its property transferred to the Crown by the statute 32 Hen. 8, c. 34, on the ground, as the preamble set out, that they had "unnaturally and contrary to the duty of their allegiances sustained and maintained the usurped power and authority of the Bishop of Rome."

Hostelagium. A right of a lord to lodging and entertainment in the house of a tenant.

Hostes sunt qui nobis vel quibus nos bellum decernimus; cæteri proditores vel prædones sunt (7 *Rep.* 24). (Enemies are those with whom we are at war; others are traitors or robbers.) That is to say, no subject can claim as against the King the rights of a belligerent. "*Les liges le Roy,*" said Prisot, Chief Justice of the Common Bench, in 1454, "*ils ne purront estre appelles esnemis le Roy, mes traitors*" (Y.B. 6 Hen. 6, fol. 2B), if they levy war upon the King. And this is still law.

Hostiler. A corruption of *hostelier*, the keeper of a hostel or inn.

Hostile Witness. A witness whose conduct while under examination is such that the side by which he is called may, by leave of the judge, cross-examine him. A hostile witness does not mean one who gives evidence damaging to his own side; it means one who evidently is unwilling to tell the truth.

Hotchpot. Where property is settled on the members of a class (*e.g.*, the children of a marriage) subject to a power of appointment among them, and part of it is appointed to one, that one is nevertheless not excluded by law from taking an equal share with the others in the part which remains unappointed, and thus obtaining a larger share than any of the others. This is usually prevented by the insertion of a clause called a hotchpot clause, which declares that no appointee shall take any share in the unappointed past without bringing his appointed share into hotchpot; that is, without adding it for the purpose of computation to the unappointed part, when the whole is divided equally. Of course an appointee is not bound to do this, and only does it when his appointed share is less than what he would obtain if no appointment had been made.

The Statute of Distribution contains a similar provision applying to advancement. See ADVANCEMENT; FRANKMARRIAGE.

"It seemeth," says Littleton, "that this word *hotchpot* is in English a pudding." It is derived from the Dutch *hutspot*, from *hutsen*, to shake up, and *pot*, or from the French *hochepot*, from *hocher*, to shake up.

House Agent. This expression is defined by s. 10 of the Revenue (No. 1) Act, 1861. It does not include agents for the sale or letting of unfurnished houses or of any house not exceeding £25 in annual rent or value. A house agent acting without an annual licence, expiring on 5th July (s. 11), is liable to a penalty of £20 (s. 12), unless he be an agent managing the property for an owner, a solicitor, or a licensed auctioneer or appraiser (s. 13). The holder of a house agent's licence, which costs £2 (s. 1), may act as an appraiser (s. 11). See VALUATION AND APPRAISEMENT.

House-bote. See ESTOVERS.

Housebreaking is where a person breaks and enters a dwelling-house or building occupied therewith, or a school-house, shop, warehouse, counting-house, etc., and commits any felony therein, or where a person commits a felony

in any such building, and then breaks out of it (Larceny Act, 1916, s. 26). The maximum punishment is fourteen years' penal servitude (*ib.*). Compare BURGLARY.

House Duty. See INHABITED HOUSE DUTY.

House of Commons is the third branch of Parliament (q.v.), and consists of representatives of the nation at large (exclusive of the peerage), chosen by election. The counties of the United Kingdom (from which Southern Ireland is now excluded) are represented by members who were formerly called knights of shires, and the cities and boroughs by members who were called citizens and burgesses. Now all members are known simply as members of Parliament. The principal universities also elect representatives. There are now 615 members of the House. See ELECTORAL FRANCHISE; CHILTERN HUNDREDS; OFFICE OF PROFIT.

House of Lords is the assembly of lords spiritual and temporal, which forms the second branch of Parliament (q.v.). The lords spiritual are the two archbishops and such of the bishops of the Church of England (now separated from the Welsh Church (q.v.)) as have seats in Parliament by ancient usage or by statute.

The lords temporal consist of (1) the peers of England, of Great Britain and of the United Kingdom; (2) the representative peers of Scotland and Ireland, the Scotch peers having the right to elect for each Parliament sixteen representatives from their own body, and the Irish peers twenty-eight for life; (3) life peers, consisting of the six Lords of Appeal in ordinary (see LORDS OF APPEAL), and of such Lords of Appeal in ordinary as have retired from office. The Lord Chancellor is prolocutor and president of the House. (See CHANCELLOR.)

In addition to their functions as part of the legislature, the House of Lords exercise judicial authority (1) in the trial of peers for treason or felony (see CERTIORARI; LORD HIGH STEWARD); (2) in claims of peerage; (3) in disputed elections of representative peers; and (4) as a Supreme Court of Appeal from the Court of Appeal in England, and the Superior Courts of Scotland and Northern Ireland.

As to the practice in appeals to the House of Lords, see APPEAL; APPENDIX; CASE; PETITION.

See ACT OF PARLIAMENT.

House of Lords Offices Committee. See LORD PRIVY SEAL, besides whom the committee comprise the Lord Chancellor, the Lord President of the Council, and a fluctuating number of other peers.

Houses of Correction were a species of prison, originally designed for the confinement of vagrants and paupers refusing to work. By the Prisons Act, 1835, they were made available for the detention of prisoners committed for trial, and the effect of the Prison Act, 1865, ss. 4, 56, was to abolish all distinction between them and other prisons (q.v.).

House Tax. See INHABITED HOUSE DUTY.

Hudson's Bay Company. A company incorporated in 1670 by royal charter under the title of "The Governor and Company of Adventurers of England Trading into Hudson's Bay." Under their charter they acquired what were practically *jura regalia* in the vast territory now forming the middle part of Canada; and they used their position as a means of keeping in their own hands all the trade of their territory. Finally the company surrendered all its sovereign rights in 1868, and its territories were made part of Canada under the statute 31 & 32 Vict. c. 105. The company is still, however, the owner of an enormous amount of land and is a great trading corporation.

Hue and Cry is the old common law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another. All those who join in following upon a hue and cry are justified in apprehending the person pursued, even though it should turn out that he is innocent, or that no felony has been committed. To maliciously or wantonly raise a hue and cry is a misdemeanour and grounds a civil action.

Huissier. This means the same as usher (q.v.), which, through various forms, is derived from it.

Humber Rules, 1910. These rules (for which see S. R. and O. 1910, No. 832) are made under s. 421 of the Merchant Shipping Act, 1894. They regulate the navigation of the Humber.

Humiliation, Day of General. See FAST DAYS.

Hundred is a district forming part of a county, and was formerly governed by a high constable or bailiff. Hundreds were originally so called because each consisted of a hundred families of freeholders, or ten tithings. Each hundred formerly had its Court (see HUNDRED COURT), but they have fallen into disuse.

As to the Hundred of St. Briavel's, see GALE.

The status of a hundredor (or freeholder of a hundred) is now one of little importance.

Under the statute 7 & 8 Geo. 4, c. 31 (which consolidated the law on the subject), if damage was done to buildings or erections by "persons riotously and tumultuously assembled together" the inhabitants of the hundred, or district in the nature of a hundred, in which the offence was committed, were liable to yield full compensation to the person damnified. That Act was repealed by the Riot (Damages) Act, 1886, which makes the police district, instead of the hundred, the area from which compensation is payable.

Formerly the jurors in an action were taken from the neighbourhood of the vill or place where the cause of action was laid in the declaration, and some of them were obliged to be returned from the hundred in which the vill lay; if none were returned, the array might be challenged for defect of hundredors; this rule was abolished by statute 24 Geo. 2, c. 18, s. 3, and the Juries Act, 1825, 6 Geo. 4, c. 50, s. 13.

See WAPENTAKE.

Hundred Court is only a larger Court baron (q.v.), being held for all the inhabitants of a particular hundred (q.v.) instead of a manor. Hundred Courts are now rare, the County Court Act, 1867, s. 28, having abolished such of them as were not Courts of record. See SALFORD HUNDRED COURT OF RECORD; ANGLO-SAXON LAWS.

Hundred-man. The officer or constable of the Hundred Court.

Hundred-mote. The Hundred Court of Anglo-Saxon times.

Hundredor. One of the inhabitants of a hundred who was liable to serve on a jury trying an issue regarding land situate therein. See the statute 35 Hen. 8, c. 6. It meant also the hundred-man (q.v.): see *e.g.*, the statute 2 Edw. 3, c. 4.

Hundred-penny. A tax formerly levied in the hundred by the sheriff.

Hundred Rolls. In 1274 Edward I. sent out commissioners to enquire by what warrant the great landowners were exercising *jura regalia* (q.v.). The result of these enquiries is embodied in what are known as the Hundred Rolls.

Hundredweight. This consists of eight stones (q.v.) (Weights and Measures Act, 1878, s. 14).

Hurrers. The makers of hats and caps in the city of London were anciently known as hurrers. They were included in the Haberdashers' Company.

Hus and Hant. Words used in pleadings of the reign of Henry III., which, except for these words, are in Latin; see 4 *Inst.* 72, where Coke gives a specimen of a pleading and an elaborate but scarcely convincing explanation of these words.

Husband and Wife. The law of husband and wife deals with the following matters:—(1) The pre-requisites and formalities of marriage, as to which see AFFINITY; CONSANGUINITY; DOMICILE; LICENCE; MARRIAGE. (2) The effect of the marriage on the rights and duties of the parties, as to which see CURTESY; DOWER; FREEBENCH; MARITAL RIGHTS; MARRIAGE; NECESSARIES. (3) Marriage settlements: see SETTLEMENT; EQUITY TO A SETTLEMENT. (4) Protection orders and separation deeds (q.v.). (5) Restitution of conjugal rights, judicial separation, separation orders, and divorce (q.v.). (6) Married women's property (q.v.).

Huscarle. Used in Domesday as meaning a male domestic servant.

Hush Money. Money paid to induce a person to compound a felony or to stifle a prosecution. See COMPOUNDING, ETC.; STIFLING, ETC.

Husting. A court held in a building as distinguished from other courts which, at an early period, were held in the open air. See COURT OF HUSTINGS.

Down to the passing of the Ballot Act, 1872, parliamentary candidates were nominated from a temporary wooden platform, known as the hustings, and addressed the electors from it; and from it the sheriff then took the "show of hands."

Hutesium et clamor. Hue and cry (q.v.).

Hybernagium. The season, between Michaelmas and Christmas, for sowing winter corn. *Tremagium* was the season, in spring, for sowing summer corn. The words were sometimes used as meaning respectively (1) the seasons included in them; (2) winter corn (that is to say, wheat and rye) and summer corn (that is to say, barley and oats), and (3) the lands on which the two classes of corn were grown.

Hypothecation. In its proper sense, hypothecation is where a ship, or her freight or cargo, or all three, are made liable for the payment of money borrowed by the master. It is of two kinds—bottomry and respondentia (q.v.).

In modern times attempts have been made to introduce "hypothecation" from the Roman law, as a general term equivalent to "charge," the proper English term. In this use of the word, to hypothecate property is to charge it with the payment of a sum of money

or the performance of an obligation, giving the person in whose favour it exists neither the right to the possession of the property, nor the right to sell it, but merely the right of realization by judicial proceedings in case of default by the person who has made the hypothecation.

I

I.O.U. An I.O.U. is an acknowledgment of a debt in this form:—

London, 1st April, 1923.

Mr. William Smith.

I.O.U. one hundred pounds.

£100. JOHN AIKIN.

It need not, however, be addressed to the creditor by name. If an I.O.U. contains an agreement to pay, it becomes either an agreement or a promissory note and must be stamped accordingly.

Ibbetson's Acts. The popular title of both the Wine and Beerhouse Act,, and the Wine and Beerhouse Amendment Act, 1870. These Acts were introduced by Sir Henry Selwin-Ibbotson, M.P., afterwards the first and only Baron Rookwood.

Ice. The master of a British ship is required by the Merchant Shipping (Convention) Act, 1914, s. 2, to report any dangerous ice of which he comes to know.

Id certum est quod certum reddi potest; sed id magis certum est quod de semet ipso est certum (9 *Rep.* 47). (That is certain which can be made certain, but that is still more certain which of itself is certain.) See CERTUM EST, ETC.

Idem agens et patiens esse non potest (*Jenk. Cent.* 40). (It is impossible for a man to do as well as to suffer the same thing.) See NEMO AGIT, ETC.

Idem est facere et non prohibere cum possis; et qui non prohibet cum prohibere possit in culpâ est (3 *Inst.* 158). (Not to prevent an act when prevention is possible is the same thing as to do the act; and he is to blame who does not prevent the commission of an offence when he has power to prevent it.) Cited by Coke as illustrating the statement that justices, constables, etc., who took no steps to suppress an affray were liable to fine and imprisonment. See also QUI NON OBSTAT, ETC., and compare CULPA CARET, ETC.

Idem est nihil dicere et insufficienter dicere (2 *Inst.* 178). (It is the same thing to say nothing and to say what is insufficient.) Cited as illustrating the statement that a prisoner was held to be mute (q.v.) in point of law if he said something but would not plead either guilty or not guilty.

Idem est non esse et non apparere (*Jenk. Cent.* 207). (Not to exist and not to appear to exist are the same thing in point of law.) Cited by Jenkins apparently as meaning that facts not appearing on the proceedings in a case are to be treated as non-existent. But the maxim has been applied as illustrating the rule that alluvion (q.v.) will in law be taken to have never occurred unless the process was perceptible.

Idem semper antecedenti proximo refertur (*Co. Litt.* 20). (The word "same" always refers to the nearest antecedent.) Cited as illustrating the proposition that a grant to A for life, remainder to B in tail, remainder to C "*in formâ prædicti*" is void for uncertainty (an estate for life and an estate tail both being "aforesaid"), but that a grant to A for life, remainder to B in tail, remainder to C *in eadem formâ* was good inasmuch as the word *eadem* could refer only to the estate tail.

Idem sonans. (Sounding alike.) The Court will not set aside the verdict of a jury merely because, owing to a similarity of sound, Thomas Box, being on the panel, answers in good faith to the name of Thomas Cox, who is also on the panel, and serves on the jury as if he were in fact that person.

Identification; Identity. To identify a person or thing is to show that he or it is *the* person or thing in question. Thus, on an inquest or trial for murder, the first thing is to identify the deceased, that is, prove who he was. So in investigating the title of land, the purchaser, in the absence of a stipulation to the contrary, is entitled to proof of the identity of the land described in the title deeds, with that which he has contracted to purchase.

Identitate nominis, De. A writ which anciently lay to the sheriff directing him to enquire whether one arrested in a personal action was the person against whom the action had been brought.

Ideota inquirendo vel examinando, De. A writ which formerly lay to the sheriff directing him to ascertain by the verdict of a jury whether such and such a person was an idiot. See now LUNACY.

Idiocy; Idiot. According to the old lawyers, an idiot or fool natural is a person who from his birth, by a perpetual or incurable infirmity, is of unsound mind. By the Statute *De Prerogativâ Regis*, 17 Edw. 2, c. 9, the king shall have the custody of the land of natural fools,

taking the profits of them without waste or destruction, and shall find them their necessaries; and after their death he shall render the lands to their right heirs. This prerogative was never favoured at law, and is now never exercised, the procedure by inquiry in lunacy having made it unnecessary. At the present day idiocy is considered as a species of insanity or lunacy. See INSANITY; LUNACY; MUTE; NON COMPOS MENTIS. But it, in common with other forms of mental deficiency not amounting exactly to lunacy, is now specially dealt with in the Mental Deficiency Act, 1913, which (s. 1) defines idiots as "persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves from ordinary physical dangers." See MENTAL DEFICIENCY.

"Idle and Disorderly Person." See VAGRANCY.

Idoneus. It was said in the old law that a man was *idoneus homo* (a fit person) if he had honesty, knowledge and ability, and that anyone holding a public office should be discharged if he lacked any one of these three things: this principle is not acted on now.

Anciently *idoneum se facere* meant to purge oneself of a crime by oath. See Leg. Hen. 1, c. 75, and COMPURGATION.

Id possumus quod de jure possumus (*Lane*, 116). (We can do what the law allows us to do.) And so the words "if by the law it may be" in a bequest which was void as being for a superstitious purpose were of no effect.

Id quod commune est, nostrum esse dicitur. (That which is common is said to be ours.) This maxim has for centuries been held to illustrate the rule that a marine insurance of partnership property by one partner extends not only to his own interest but to the whole interest of the partnership. The Partnership Act, 1890, s. 5, expressly gives him implied authority to insure on behalf of the partnership.

Id quod nostrum est sine facto nostro ad alium transferri non potest (*Dig.* 50, 17, 11). (What is ours cannot be transferred to another except by our own act.) English law, as well as the Roman law, used to work on this principle, but it has been much broken in on by the Legislature during recent years. Compare NEMO COGITUR, etc.

Ignetegium. Curfew (q.v.).

Ignis judicium. The judgment of the fire, that is to say, ordeal (q.v.) by fire.

Ignoramus. "We know nothing of it," or "we ignore it," was formerly the indorsement made on a bill of indictment by a grand jury when they thought the charge not sustained by the evidence. They now indorse "Not a true bill," or "Not found." See INDICTMENT.

Ignorance of Fact or Law. See MISTAKE.

Ignorantia eorum quæ quis scire tenetur non excusat (*Hale Pl. Cr.* 42). (Ignorance of those things which everyone is bound to know, does not constitute an excuse.)

Ignorantia facti excusat; ignorantia juris non excusat (1 *Rep.* 177). (Ignorance of the fact excuses; ignorance of the law does not excuse.) See MISTAKE.

Ignorantia judicis foret calamitas innocentis (2 *Inst.* 591). (Ignorance on the part of a judge would be a calamity for the innocent.)

Ignorantia juris quod quisque scire tenetur non excusat. (Ignorance of the law which everybody is supposed to know does not afford excuse.) Coke gives the maxim at 2 *Rep.* 3*b*, as *Ignorantia juris non excusat;* the other words are an adaptation of part of the maxim *Ignorantia eorum*, etc.

Ignorantia legis neminem excusat. The version given by Lush, J. (at L. R., 3 K.B. 639), of the maxim *Ignorantia juris non excusat.*

Ignore. A grand jury are said to ignore a bill of indictment when they think the charge not sustained by the evidence. See INDICTMENT; JURY.

Illegal. An act is illegal when it is one which the law directly forbids, as to commit a murder, to obstruct a highway, or to sell a loaf otherwise than by weight. The illegality of an act is not only of importance as subjecting the doer to the penalties imposed for disobedience of the law, but also because the act is not recognised by law as capable of creating any right, except as a remedy for any injury caused by it. Thus, if A agrees with B to pay him £50 for the publication of a libel, or the like, the contract is void. But an act is not illegal in the strict sense simply because it is not recognised by the law as capable of giving rise to rights. Thus a contract made *ultrà vires* is void, but not illegal; and a cheque given in payment of a bet is given for an illegal consideration (see GAMING) and the payee cannot sue thereon, although it is not illegal to give the cheque.

Illegal is also used (1) in the same sense as unlawful (q.v.); (2) in the same sense as void; but it is convenient to keep the ideas distinct.

See CONDITION; CONSIDERATION; IMMORALITY.

Illegal Practices. This expression means certain acts so termed in, and prohibited by, the Corrupt and Illegal Practices Prevention Acts, 1883 and 1895. Both of those Acts

were passed in order to put an end to such practices (and also to corrupt practices (q.v.)) at parliamentary elections.

The Municipal Elections (Corrupt and Illegal Practices) Act, 1884, was passed in order to purify municipal elections in like manner: it has been extended to county council elections by the Local Government Act, 1888, s. 75, and to parish and district council, and other local government elections by the Local Government Act, 1894, s. 48 (3) (8), and by various orders made under statutory powers.

Illegal practices are: Payments for conveyance of voters to the poll, or for exhibition of addresses, bills or notices, or for excessive number of committee rooms; publishing false statement of withdrawal of a candidate; publishing a bill, etc., without name and address of the printer; payment made by election agent after the authorised time or otherwise improperly made; election expenses (q.v.) in excess of maximum permitted, or election expenses paid otherwise than through the election agent; voting by prohibited persons; failing to make return of election expenses; false statements as to the personal character of a candidate.

Illegitimacy. See BASTARD; CHILD; LEGITIMACY.

Illud quod alias licitum non est necessitas facit licitum; et necessitas inducit privilegium quod jure privatur (10 *Rep.* 61). (That which is otherwise not permitted, necessity permits; and necessity establishes a privilege which respects the operation of the law.) This is merely a quotation from Bracton which was used by the Court as showing how a statute should be construed. Compare NECESSITAS NON, ETC.

Illusory. See APPOINTMENT, POWER OF.

Imbasing. The imbasing of money meant the reduction of the standard of purity of coin, the nominal value remaining unchanged. The reduction in the standard of purity of silver coins which was authorised by the Coinage Act, 1920, is a modern instance of what anciently would have been called imbasing: but the silver coinage is now really only an expensive form of token money, whereas it anciently was the standard just as the gold coinage is now. Compare INHANSING.

Imbecile. The Mental Deficiency Act, 1913, s. 1, defines imbeciles as "persons in whose case there exists from birth or from an early age mental deficiency not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, being taught to do so." See IDIOT; MENTAL DEFICIENCY; MORAL IMBECILE.

Immemorial. Beyond legal memory: see MEMORY; PRESCRIPTION.

Immorality is of importance in law, because no party to a transaction founded on immorality can invoke the assistance of a Court of law in enforcing, nor (except in a few cases) in setting it aside. Thus, a contract for an immoral purpose or for an immoral consideration is void; but a party to an immoral contract or conveyance cannot, as a general rule, have it set aside. Almost the only kind of immorality having this vitiating effect is that consisting in illicit cohabitation. Thus an agreement providing for or tending to illicit cohabitation is void.

See also INDECENCY; POLICY.

Impanel. A jury is said to be impanelled when the sheriff has entered their names in the panel (q.v.).

Imparcamentum. A right of impounding cattle.

Imparl; Imparlance. Down to 1833, "imparlance" formed part of the procedure in a common recovery (q.v.). It consisted of a conference between plaintiff and defendant in order to see whether the matter could be amicably settled. In a common recovery it was part of a solemn piece of humbug, but in other cases it was what it purported to be, and under the old procedure a defendant in a civil action was entitled to "imparl" once with the plaintiff.

Imparsonee. See PARSON.

Impeachment was a complaint or accusation against a person for a great public offence, especially against a minister of the Crown for malversation or treason. The House of Commons first found the crime, and then as prosecutors supported their charge before the House of Lords, who tried and adjudicated upon it. The charge was contained in articles of impeachment, to which the accused made answers, and so on; the Commons appointed managers to conduct the proceeding on their behalf. (See LORD HIGH STEWARD.) Impeachment has not ceased to be possible: but it is practically obsolete, the last impeachment being that of Lord Melville in 1804.

Impeachment of Waste. Where an estate for life is given to a person "without impeachment of waste," he may cut down trees on the land and convert them to his own use, and open mines, etc.; but he may not pull down the family mansion, or fell ornamental

timber, or commit any other acts of the kind known as equitable waste. See WASTE.

Impediatus. A dog which had been expeditated (q.v.) was described either as *expediatus*, or as *impediatus*, or as lawed.

Impediments to Marriage. These are (1) the continuance of a prior marriage; (2) affinity (q.v.) or consanquinity (q.v.) within the prohibited degrees; (3) force, fraud, or error; (4) want of sufficient age or of mental or physical capacity.

Imperative. See DIRECTORY.

Imperial Service Order, The. Founded in 1902 as a means of giving what is practically a long service and good conduct badge to members of the Civil Service. It consists of not more than 700 companions (I.S.O.) of whom 250 may belong to the Home, 200 to the Indian and 250 to the Dominion and Colonial Services.

Imperitia culpæ adnumeratur (*D.* 50, 17, 132). (Inexperience is accounted a fault.) This maxim has no application in our law.

Impertinence. Under the old rules of Chancery pleading, impertinence consisted in the introduction of long and unnecessary or immaterial allegations into a bill. The plaintiff was liable to pay the costs occasioned thereby. A similar rule still prevails. See Ord. 19, rr. 2, 5, 27; Ord. 65, r. 27 (20) (22).

Impescatus. Anciently this meant especially "impeached," and also "accused."

Impetitio. Impeachment (q.v.).

Impetratio; Impetration. In the ancient law this meant obtaining from the Pope a benefice which lay in the gift of the King or of some other layman: see the statutes 25 Edw. 3, st. 4; 38 Edw. 3, st. 2; 38 Edw. 4, c. 1. Impetration when it related to a bishopric was termed provision (q.v.).

Impierment. Used in the statute 23 Hen. 8, c. 9. as meaning prejudice.

Implead. Anciently this meant to prosecute or take proceedings against a person: in the statute 1 & 2 P. & M., c. 8, s. 35, it would appear to be used as meaning to make a thing the subject of litigation.

Implication; Implied.—I. An intention, or an act evidencing intention (such as a promise, request, devise, gift, offer, etc.), is said to be implied when it does not really exist, but is presumed to exist; that is, the same legal effect is produced as if it did exist. Thus, when a person goes to an inn with goods, and is taken in by the innkeeper, the law implies a promise by the innkeeper to keep his guest's goods safely, subject to certain exceptions, although the innkeeper may have had no such intention. Such a promise is sometimes said to be "implied in law" (or to exist in implication of law) in order to distinguish it from implication in the wider sense of the word (*infra*).

II. Implication is also used in the sense of inference, that is, where the existence of an intention is inferred from acts not done for the sole purpose of communicating it, but for some other purpose. (See EXPRESS). Thus, if a person orders goods to be sent to him, he impliedly promises to pay for them. Such a promise is more correctly called a tacit promise, so as to distinguish it from an express promise. So where a testator gives property to one person in such terms as to show that he meant to give some interest in it to another, the latter takes an interest by implication. Thus, if a testator gives personal property to A after the death of B, without giving anything to B expressly, then B takes a life interest in the property by implication.

"Implied" is sometimes applied in both the above senses to the same subject-matter. See CONTRACT; COVENANT; TRUST; WARRANTY; also CONSTRUCTION; EXPRESS; TACIT; QUASI-CONTRACT.

Impossibility. The question whether an act is possible is of importance in law with reference to the performance of conditions and agreements. See PERFORMANCE.

I. With reference to the nature of the act required, an impossibility is either physical, legal or logical.

An act is physically impossible when it is contrary to the course of nature. Such an impossibility may be either absolute, that is, impossible in any case (*e.g.*, for A to reach the moon), or relative (sometimes called impossibility in fact), that is, arising from the circumstances of the case, *e.g.*, for A to make a payment to B, he being a deceased person.

To the latter class belongs what is sometimes called practical impossibility, which exists when the act can be done, but only at an excessive or unreasonable cost. Thus, when a ship is so injured that it is not worth while repairing her, the same effect with respect to the liability of the insurer is produced as if it were physically as well as practically impossible to repair her. See Loss.

An act is legally or juridically impossible when a rule of law makes it impossible to do it, *e.g.*, for A to make a valid will before his majority. This class of acts must not be confounded with those which are possible, although forbidden by law, as to commit a theft. See ILLEGAL; UNLAWFUL.

An act is logically impossible when it is contrary to the nature of the transaction, as where A gives property to B expressly for his own benefit, on condition that he transfers it to C. See REPUGNANCY.

II. With reference to the time when the impossibility first exists, the act may be either originally impossible (*ab initio*), or become impossible by matter subsequent (*ex postfacto*). Thus, if A contracts with B to pay money into the hands of C, and C was dead at the time the contract was entered into, then the payment was originally impossible; if C was alive at the time, but dies before the payment, it becomes impossible by matter subsequent. The latter class are again divisible according as the performance of the act required is rendered impossible by the person creating the requirement, by the person for whose benefit the act was to be done, by the person required to do it, by a stranger, such as the King's enemies (q.v.), by the act of God (q.v.), or by a change in the law, etc.

These divisions are important with reference to the effect of non-performance of the impossible act. Thus a contract for the performance of an act which every reasonable person must know to be impossible (as to make a flying machine and fly to the moon with it) is void, and an impossible consideration is no consideration. On the other hand, if a person contracts to do an act which is only impossible from circumstances (as to build a house in a week, all the workmen in the building trade being on strike, or to pay money when he has none), the impossibility does not excuse his non-performance except in special cases (*ante*). Again, if the act becomes impossible by the act or default of the promisor, not only does this not excuse him, but it operates as a breach of his contract, although the time for performance may not have arrived, while if it becomes impossible by the act of the person for whose benefit it was to be done, the promisor is discharged from performance. All these rules, however, are subject to the intention appearing from the whole transaction. See CONDITION.

Impossibilium nulla obligatio est (*D.* 50, 17, 185). (There is no obligation to do impossible things.) Compare NEMO TENETUR, etc.; LEX NON COGIT, ETC.

Impost; Imposition. In the ancient law this meant a tax or duty and more especially a customs duty. In conveyances where lands are granted subject to a rent the rent is said to be payable "over and above all taxes, charges, and impositions whatsoever."

Impotentia excusat legem (*Co. Litt.* 29). (When a man is unable to do a thing he can plead the law as an excuse.) The maxim is cited in Coke in connection with the law as to tenancy by the curtesy. But now it is used in much the same sense as *Lex non cogit*, etc.

Impotentiam, Propter. A qualified property in animals may exist *propter impotentiam*, that is to say, because of their helplessness. Thus such a property may exist in young birds in nests upon a man's trees, but only until the birds are able to fly.

Impound. In its literal sense, to impound is to put distrained cattle or other goods in a pound (q.v.), and as this is done to keep them as security, the term is also applied to cases where a document, money or other property is by order of the Court set apart to be kept in safety until some condition is fulfilled or some question is decided.

Impressment is a power possessed by the Crown of taking persons or property to aid in the defence of the country with or without the consent of the persons concerned. It was usually exercised until 1815 to obtain hands for the King's ships in time of war by taking seamen engaged in merchant vessels, but in earlier times impressment of merchant ships was also practised. The Admiralty issued protections against impressment in certain cases, either under statutes passed in favour of certain callings (*e.g.*, persons employed in the Greenland fisheries) or voluntarily.

Under the Army Act, 1881, ss. 112-121, power is given of impressing carriages, animals and drivers required for moving military baggage and stores. This power was extended to aircraft by the Army (Annual) Act, 1913, s. 5: the Army (Amendment) Act, 1915, s. 2, provides for the ascertainment of the sums payable to the owners of carriages, etc., which are impressed; and the Navy Billeting, etc., Act, 1914, gives the Navy rights of impressment similar to those of the Army. See also the Army (Amendment) No. 2 Act, 1915, s. 3.

Imprest; Imprest-money. This is money imprested or advanced by the Crown for the purpose of being employed for its use. The term is not wholly obsolete. Anciently it also meant money paid in advance to men in the military or naval service of the Crown.

Imprimatur. (Let it be printed.) The word used during the period of the censorship (see PRESS) to authorise the printing of a book.

Imprisii. Adherents, as in the expression "*imprisii Regis*," used by Mathew Paris.

Imprisonment, as a punishment, consists in

the detention of an offender in prison and in his subjection to the discipline appointed for prisoners during the period expressed in the sentence. It is either imprisonment with hard labour (q.v.) or imprisonment without hard labour; and if it be imprisonment without hard labour, it may be in the first, the second, or the third division. Prisoners in the First Division are treated in much the same way as those awaiting trial. Prisoners in the Second Division are clothed in dress of a colour different to that used for the Third Division, are segregated as far as possible, and are allowed a letter and a visit at the end of the first month and thereafter monthly. The Third Division are not allowed a letter and visit until after two months; the next letter and the next visit are allowed after a further six weeks; and thereafter a letter and a visit are allowed monthly. In all other respects, as regards food, labour, etc., there is no difference between the Second and Third Divisions.

Formerly imprisonment was a disability, in certain cases, which prevented the Statutes of Limitation from running against the person imprisoned, but this is no longer so. See the Mercantile Law Amendment Act, 1856, s. 10.

As to imprisonment in civil proceedings see ATTACHMENT; COMMITTAL; CONTEMPT; DEBTORS ACT.

See PENAL SERVITUDE; FORFEITURE.

Improbi rumores dissipati sunt rebellionis prodromi (2 *Inst.* 226). (Wicked rumours spread abroad are the forerunners of rebellion.) This is quoted by Coke in connection with the civil wars of the reign of Henry III:

Impropriation; Impropriator; Impropriate. Impropriation is where a rectory or tithes belong to a lay person called the impropriator. In the case of a rectory, the impropriator or lay rector is bound to provide for the cure of souls by appointing either a vicar or a perpetual curate. A rectory or tithes belonging to an impropriator are termed impropriate.

Impropriation is derived from the Latin *in proprietatem*, because the living is held as a lay property. Impropriation dates from the time of the Reformation, when many rectories which had been appropriated to the monasteries were granted to laymen. Before that time a layman could not hold a benefice.

Improvement of Land Acts. By the Improvement of Land Acts, 1864 and 1899, any person in the possession or receipt of the rents or profits of land (not being a tenant under an unrenewable lease for life or for less than twenty-five years) may, with the sanction of the Ministry of Agriculture and Fisheries (q.v.) borrow or advance money for the execution of certain improvements on the land, and obtain an order charging the amount, with interest, on the inheritance or fee of the land. The amount constitutes a rent-charge payable half-yearly over the period of years fixed by the order, in respect of principal and interest combined. The improvements authorised by the Acts include works of drainage, irrigation, embankment, reclamation, clearing and planting of land, and the construction of roads, farm and agricultural buildings, jetties, etc. The Limited Owners Residences Acts, 1870 and 1871, added to this list of improvements the erection of a mansion-house, with the usual and necessary outbuildings, etc., and the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31), added to it the construction or erection of reservoirs or other permanent works for the supply of water.

See SETTLED LAND.

Charges created before 1889 were registered pursuant to s. 56 of the Act of 1864 in a register now kept by the Ministry of Agriculture and Fisheries: those created since 1888 are registered pursuant to the Land Charges Registration and Searches Act, 1888.

Improvement of Towns. The Towns Improvement Clauses Act, 1847, contains a number of provisions relating to the paving, draining, cleansing, lighting and improving of towns and provides for the incorporation of these provisions in special Acts dealing with particular towns. See also the Public Health Act, 1875, ss. 160, 169.

Impunitas semper ad deteriora invitat (5 *Rep.* 69). (When a crime is left unpunished there is an inducement to the commission of worse crimes.)

Compare MINATUR INNOCENTIBUS, ETC., and UT PŒNA AD PAUCOS.

Inadequacy of consideration for a contract, conveyance, or the like, does not affect the validity of the transaction, except as supporting a charge of fraud, undue influence or the like. See CONSIDERATION; EXPECTANT HEIR; FRAUD; REVERSION.

In æquali jure melior est conditio possidentis (*Plow.* 296). (Where the rights of the parties are equal, the claim of the actual possessor is the stronger.) This maxim illustrated the rule that possession constitutes a good title against anyone unable to prove a better title.

See MELIOR EST CONDITIO POSSIDENTIS, ETC.

In altâ proditione nullus potest esse acces-

sorius sed principalis solummodo (3 *Inst.* 138). (In high treason there can be no accessory but only a principal.) This has always been the law.

In ambiguâ voce legis ea potius accipienda est significatio quæ vitio caret, præsertim cum etiam voluntas legis ex hoc colligi possit (*Bac. Max. Reg.* 3). (Where the words of a statute are capable of two interpretations, then it is better to adopt the interpretation which is unobjectionable, more especially if that interpretation is in accordance with the intention of the Act.)

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset (*D.* 50, 17, 96.) (In dealing with ambiguous words the intention of him who used them should especially be regarded.)

In Angliâ non est interregnum (*Jenk. Cent.* 205). (In England there is no interregnum): that is to say, at the instant that a king dies the heir to the throne automatically becomes king.

See REX NUNQUAM, ETC.

In atrocioribus delictis, punitur affectus licet non sequatur effectus (2 *Rol. Rep.* 89). (In the case of the more atrocious crimes the intent is punished, though an effect does not follow.) This was said merely *obiter* in the course of a trial for treason in 1620. The statement really applies to all offences. See ATTEMPT.

In autre droit. (In the right of another.) If executors or administrators take legal proceedings they do so *in autre droit*, that is to say, as the representatives of the deceased.

In banc (or **bank**). See BANC.

Inborrow and Outborrow. In the Red Book of the Exchequer (1210) we read "*Comes Patricius [tenet] baroniam de Beneleghe ut sit inborewe et utborewe inter reges Angliæ et Scotiæ* (Earl Patrick holds the barony of Beneleghe in order that he may be surety in and surety out between the Kings of England and Scotland), that is to say, the Earl of Dunbar held upon the service of being surety for such persons as he passed to and from England and Scotland. He was, in fact, a species of frontier official.

In camerâ. A case is said to be heard *in camerâ* when the judge either hears it in his private room, or causes the doors of the Court to be closed, and all persons, except those concerned in the case, to be excluded. This was formerly done where it was in the public interest that the facts of the case should not be published, especially in divorce cases, though it was not clear whether the Court could do so as a matter of course in any case: but in 1913 it was decided in *Scott* v. *Scott* that there is no jurisdiction to hear any matrimonial suit *in camerâ* merely in the interest of public decency, although any such suit may be heard *in camerâ* if the Court be satisfied that justice cannot be done otherwise because, for instance, of the fact that a party would be reasonably deterred from seeking justice if the proceedings were to be in public. And so also the Court can hear *in camerâ* a case in which publicity would defeat the very object of the proceedings, as where the case relates to a secret trade process, or has been brought to prevent the publication of certain matters. In cases affecting wards of Court and lunatics, the Court can, and habitually does, sit *in camerâ*. Except in the cases above mentioned, all civil proceedings must take place in public.

As regards the trial of criminal cases, the rule is that, apart from statute, they cannot be held *in camerâ*; and the only statutes providing otherwise are (1) the Children Act, 1908, which (s. 114) is to the effect that while any witness under sixteen is giving evidence in any charge of indecency or immorality only those having business in the court may be present and (s. 115) that no child under fourteen, other than an infant in arms, may be present during any proceedings relating to such a charge unless he is actually required for the purposes of the case; and (2) the Official Secrets Act, 1920, which by s. 8 (4) enacts that the public may be excluded from proceedings (other than the passing of sentence) under that Act, or under the Official Secrets Act, 1911.

The Punishment of Incest Act, 1908, s. 5, had enacted that all proceedings under that Act should be *in camerâ*: but that enactment was repealed by the Criminal Law Amendment Act, 1922, s. 5.

It is to be noted that the preliminary investigation of indictable offences is not a "trial" and that consequently the general public can be and are excluded from it if such exclusion is for any reason desirable.

Incapable; Incapacity. Incapacity is the opposite of "capacity" (q.v.), and therefore equivalent to disability (q.v.).

In capite. See CAPITE.

In casu extremæ necessitatis omnia sunt communia (*Hale P. C.* 54). (In cases of extreme necessity, everything is in common.) "There are many cases in which individuals sustain an injury for which the law gives no action; as where private houses are pulled

down, or bulwarks raised on private property for the preservation and defence of the kingdom against the king's enemies or to arrest the progress of a fire" (per Buller, J., at 4 T.R. 797). If a highway be out of repair a passenger may lawfully go over the adjoining land.

See NECESSITAS PUBLICA, ETC.; SALUS PUBLICA, ETC.

Incaute factum pro non facto habetur (*D.* 28, 4, 1.) A thing done *per incuriam* (q.v.) is deemed not to have been done at all.

Incendiarism. See ARSON.

Incense. The use of incense, except for the purpose of fumigating the church, is illegal in the Church of England.

Incertainty. This, in the phraseology of the old common law practice, was "that which opposeth certainty" (q.v.). Both terms were applied to writs, pleadings, etc., and sometimes to deeds. See FALSE FORM; compare UNCERTAINTY.

Incerta pro nullis habentur (*Grounds of Law*, 191; *Dav.* 233). (Things which are uncertain are treated as nullities.) Thus a custom will not be recognised by the law unless it is certain.

Incerta quantitas vitiat actum (1 *Rol. Rep.* 465). (Uncertainty as to quantity spoils a deed); that is to say, a deed is void if it does not show either expressly or impliedly what quantity is granted. Compare INCERTA PRO, ETC.

Incest. This, in the ecclesiastical law, is sexual intercourse between persons who are within the prohibited degrees of consanguinity and affinity as set out in the table contained in the Book of Common Prayer. The offence so constituted is not and never was punishable by the civil Courts. It was, and is, punishable by penance or excommunication in the ecclesiastical Courts, who now, however, rarely exercise their jurisdiction: if they did exercise it, the civil Courts could be called to aid them by way of the writ of *Contumace capiendo* (q.v.). During the Commonwealth incest was a capital felony, without benefit of clergy, under Chapter 10 of the "Acts of Parliament" for 1650, incest for the purposes of that enactment being sexual intercourse between persons much less numerous than those specified in the table already mentioned The Punishment of Incest Act, 1907, was the first Act of Parliament properly so called which made incest a criminal offence. The persons to which it relates are again less numerous than those specified in the Act of Parliament of 1650. It provides that any male person who has carnal knowledge of anyone who, to his knowledge, is his granddaughter, daughter, sister or mother, and any female person over the age of sixteen who permits anyone who, to her knowledge, is her grandfather, father, brother or son to have carnal knowledge of her, shall be guilty of a misdemeanour punishable with not more than seven years penal servitude, and that it is immaterial whether the relationships above mentioned can be traced through lawful wedlock; and it further provides that an attempt by a male person to commit incest is an indictable misdemeanour. See IN CAMERA.

The incestuous adultery referred to under Dissolution (q.v.) is such adultery as amounts to incest within the meaning of the ecclesiastical law: see s. 27 of the Matrimonial Causes Act, 1857. See IN CAMERA.

Inch. The inch is one-twelfth part of a foot (Weights and Measures Act, 1878, s. 11). See FOOT.

Inchartare; incartare. Anciently this meant to grant by a written deed.

Inch of Candle. See AUCTION.

Incident is "a thing appertaining to or following another." Thus, fealty is incident to every tenure, and cannot be separated from it; so a rent may be incident to a reversion, though it may be separated from it, that is, the one may be conveyed without the other. Hence incidents are divisible into separable and inseparable.

Formerly, every tenure had one or more of the following incidents, most of which no longer exist, namely, fealty, homage and other services, aids, reliefs, primer seisin, wardship, marriage, fines, escheat, forfeiture, and heriots (see the various titles).

Incipitur, in the old common law practice, was a copy on plain paper of the first words of a proceeding in an action. Thus, in entering a judgment for the purpose of issuing execution, it was sufficient to enter an *incipitur*, that is, the commencement of the proceedings, instead of the whole (Common Law Procedure Act, 1852, s 206).

Incite; Incitement. Everyone who incites any person to commit a crime is guilty of a common law misdemeanour, even though the crime be not committed. If the crime be actually committed, he is an accessory before the fact in the case of felony, and equally guilty, in the case of treason or misdemeanour, with the person who commits the crime.

Incivile est nisi totâ sententiâ perspectâ de aliquâ parte judicare (*Hob.* 171). (It is un-

reasonable to form an opinion regarding any part of a decision without considering the decision as a whole.)

Inclosure; Inclosure Commissioners. Inclosure is the act of freeing land from rights of common, commonable rights, and generally all rights which obstruct cultivation and the productive employment of labour on the soil, by vesting it in some person as absolute owner.

Inclosure may be effected in three manners:—

(1) In the case of manorial wastes (*a*) by the lord of the manor alone under his right of approvement (q.v.); (*b*) by the lord under a special custom enabling him, with the consent of the homage, to grant parcels of the waste, to be held of him by copy of court-roll; (*c*) by the tenants themselves under various special customs (see INTAKES); (*d*) by encroachments, or unauthorised inclosures legalised by lapse of time.

(2) By agreement between the commoners and the owner of the soil.

(3) By Act of Parliament. Formerly every statutory inclosure was effected by a private Act appointing a commissioner and authorising him to parcel out the land among the persons interested (the commoners and the owners of the soil); but since the passing of the Inclosure Act, 1845, inclosures are now generally effected by permanent commissioners (at present represented by the Ministry of Agriculture and Fisheries (q.v.)), who inquire into the expediency of proposed inclosures; if they approve of a proposed inclosure, they make a provisional order setting forth the manner in which it is to be carried out, and, if Parliament thinks fit, a general Act authorising the inclosures so recommended, or some of them, is passed; each inclosure is then carried out by a valuer. (See ALLOT.) But for the last half-century no private enclosure Acts have been passed.

By the Commons Acts, 1876 and 1879, the powers of the Ministry of Agriculture and Fisheries are extended to cases where it is desirable to regulate, improve, stint and otherwise deal with commons, without wholly enclosing and allotting them in severalty; thus they may provide for the drainage or levelling of a common, the planting of trees on it, and its general management.

Formerly whenever a person entitled to a rent was prevented by gates or other erections from coming on the land to demand or distrain for it, this was called enclosure, and operated as a disseisin of the rent. (See DISSEISIN.) The term is now obsolete.

Inclusio unius est exclusio alterius. (The inclusion of one is the exclusion of another.) Another version of the maxim DESIGNATIO UNIUS, ETC. (q.v.).

Income. A bequest of income, whether it be described as such, or whether such words as dividends, interest or produce are used, is, unless a contrary intention appears, a bequest of the personal estate out of which the income arises.

Income Tax is a tax on the yearly profits arising from property, professions, trades, and offices. In the case of land, the tenant or occupier is primarily liable to pay the tax, but he is entitled to deduct a proportionate part from his rent, and he cannot by any agreement with his landlord deprive himself of this right (Income Tax Act, 1918, s. 170 (2) (*a*); Rule 23 of General Rules). The Income Tax Act, 1918, repeals and re-enacts the previously existing statute law on income tax.

The tax was first imposed in 1799 by the statute 39 Geo. 3, cc. 13, 22. Subject to modifications, it remained in force until 1816. It was then dropped, but it was re-imposed by the Income Tax Act, 1842, which has ever since been the basis of the legislation on the subject.

The present rate of income tax is five shillings in the pound, subject to certain abatements and exemptions: see the Finance Act, 1922. In 1842 it was at the rate of sevenpence in the pound.

In addition to income tax, there is a further tax known as super-tax, which was first imposed on incomes by the Finance (1909-10) Act, 1910. That Act imposed super-tax at the rate of sixpence in the pound on so much of an income as exceeded £5,000. Now, under the Finance Act, 1920, s. 15 (2), super-tax is payable on so much of an income as exceeds £2,000, the rate being one shilling and sixpence in the pound on the first £500, and running up to six shillings on anything over £30,000.

See CIVIL LIST.

Income Tax Commissioners. There are (1) Commissioners for the General Purposes of Income Tax or (Taxes Management Act, 1880, s. 5), General Commissioners, that is to say, members of the Land Tax Commission who have been appointed by that body to act for the county, etc., over which they have jurisdiction; (2) the Special Commissioners, that is to say, the Inland Revenue Commissioners and such persons as are appointed by the Treasury; and (3) Additional Commissioners, that is to say, persons who

are appointed by the General Commissioners to do, without payment, certain preliminary work in connection with Schedule D assessments.

The General Commissioners have power to decide appeals against assessments for inhabited house duty. Both they and the Special Commissioners have power to entertain appeals against assessments for income tax; but if an assessment under Schedule D has been made by the Special Commissioners the appeal is to that body.

Incompetency; Incompetent. See COMPETENCE; CAPACITY; DISABILITY.

In conjunctivis oportet utrumque, in disjunctivis sufficit alteram partem esse veram (*Wing. Max.* 9). (In conjunctives both must be true; in disjunctives it is sufficient if one of them be true.)

Where leaseholds were bequeathed to B for life, remainder to the issue of B, gift over C if B should die "an infant, unmarried, and without issue," it was held that the gift over took effect only if B fulfilled all three conditions, that is to say, died (1) an infant, (2) childless, and (3) without leaving a wife; but that if the gift over had been in the event of B dying "an infant or unmarried or without issue" it would have taken effect if he had fulfilled any one of the three conditions, as, for instance, by dying an infant but leaving issue and a wife.

In consimili casu, consimile debet esse remedium (*Hard.* 65). (In similar cases there should be like remedies.)

See also LEX BENEFICIALIS, ETC.

Inconsistency. In construing deeds and wills, the first rule is that every part of the instrument shall, if possible, take effect, and none be rejected. If, however, this cannot be done on account of an inconsistency, then the rules differ according as the instrument is a deed or a will. In a deed, if two clauses or parts be repugnant, the first part shall be received and the latter rejected, except there be some special reason to the contrary. In a will, on the other hand, the rule is that the latter of two inconsistent provisions prevails; therefore if a testator in one part of his will gives a person an estate of inheritance, and in a subsequent part refers to it as an estate for life, the prior gift is restricted accordingly.

Inconsistency in pleading is forbidden. See DEPARTURE.

In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda (*Co. Litt.* 141). (With regard to customs, not the length of time but the strength of the reason should be considered.) This maxim notwithstanding, the length of time must in fact be considered, for no custom can be good if any date can be given for its commencement: but no custom, even though of immemorial origin, is good unless it fulfils the other requisites of a good custom in the way of being reasonable, compulsory, consistent with other customs, etc.

See QUOD AB INITIO; ETC.

In contractis, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est (*Co. Litt.* 112). (Contracts are to be construed liberally, wills still more liberally, and restitutions in the most liberal possible way.) Coke cites this maxim only in connection with wills. The restitution referred to is the *restitutio* of the Roman law. Our law knows nothing of it.

In contractis tacitè insunt quæ sunt moris et consuetudinis. (The clauses which are in accordance with custom and usage are an implied part of every contract.) This was a maxim of the civil law: it has been adopted by our law (see 3 *Bing. N. C.* 818).

In conventionibus contrahentium voluntas potius quam verba spectari placuit. (In construing agreements the intention of the parties, rather than the words actually used, should be considered.)

Incopolitus. Used in Leg. Hen. I., as meaning a proctor or vicar.

Incorporated Dental Society, The. This originated in 1892 as an association of unregistered practitioners of dentistry: it was formed into a company limited by guarantee in March, 1911. Those eligible for membership prior to 28th July, 1921 (see DENTISTS) were such persons as (a) were of good character, (b) had served an apprenticeship of not less than four years with a dental practitioner, registered or unregistered, and had practised dentistry personally for not less than a year, and (c) had passed an examination prescribed by the society.

Incorporated Law Society. See LAW SOCIETY.

Incorporation. This word is used in the law in two different senses: (1) The merging of one thing in another so that the two form a single whole; and (2) The formation of a number of persons into a body politic or corporation.

The word is used in the first sense when we speak of the incorporation of a document in a will; this occurs when a will is so worded that a pre-existing document is to be read as part of the will. And in the same sense

a codicil incorporates the earlier will, so that the two form one whole. There is also incorporation in the same sense when a private Act of Parliament incorporates the Lands Clauses Act, 1845, or the Railways Clauses Consolidation Act, 1845, in whole or in part. See CLAUSES ACTS.

Incorporation in the second sense takes place by royal charter, by royal letters patent, by special Act of Parliament, or by royal charter granted in pursuance of a special Act of Parliament: instances of all these methods are given under COMPANIES, CHARTERED; ROYAL COLLEGE OF PHYSICIANS; ROYAL COLLEGE OF SURGEONS AND VETERINARY SURGEONS; ETC. But the vast majority of incorporations now take place—and since 1862 have taken place—under the Companies Acts. See COMPANY.

Incorporeal Hereditaments. See HEREDITAMENTS.

Incorrigible Rogue. See VAGRANCY.

Increase, Affidavit of. See AFFIDAVIT.

Increment Value Duty. See LAND VALUES DUTIES.

In criminalibus probationes debent esse luce clariores (3 *Inst.* 210). (In criminal cases the proofs ought to be clearer than light): that is to say, no man should be convicted if there is any doubt as to his guilt. Compare EXCUSAT, ETC.

In criminalibus sufficit generalis malitia intentionis cum facto paris gradûs (*Bac. Max. Reg.* 15). (What may be described as malice at large is sufficient to constitute a crime if it be accompanied by an appropriate act):—Thus A is guilty of killing B feloniously and of malice aforethought, if B be killed by a shot fired by A into a crowd without any intention of killing B in particular.

In criminalibus voluntas reputabatur pro facto (3 *Inst.* 106). (In criminal cases the will used to be taken for the deed.) This is cited by Coke merely as having been a rule of the law in the time of Edward III.

Incroachment. See ENCROACHMENT.

Incumbent. See INDUCTION.

Incumbrance. See ENCUMBRANCE.

Incurramentum. (Becoming liable to a penalty, fine, or amerciament.) *Incurrere alicui* meant to become liable to penalty, fine, or amerciament at the hands of another; thus "Statutum est quod . . tenentes . . . Regi incurrantur" (Stat. West. II., c. 37).

In custodia legis. (In the custody of the law.) This does not mean in the custody of a policeman. It refers to the moneys and securities which are in the hands of the Paymaster-General: to the preservation or *interim* custody of the subject-matter of a disputed contract under Ord. 50, r. 1; to deeds or documents deposited in the Central Office under Ord. 61, r. 30; and, in short, to every case in which anything is in the possession of officers of the Court as such. Compare IN GREMIO LEGIS.

Indebitatus assumpsit. See ASSUMPSIT.

Indecency. It is a misdemeanour at common law to do any grossly indecent act, or to exhibit any indecent thing, in any open or public place. As to gross indecency between male persons see the Criminal Law Amendment Act, 1885, s. 11.

See also EXPOSURE, INDECENT; INDECENT ASSAULT; OBSCENITY; PHOTOGRAPH.

Indecent Advertisements. This means, for the purposes of the Indecent Advertisements Act, 1889, any advertisement relating to any complaint or debility relating to or arising from sexual intercourse (*ib.* s. 5). Exhibiting any such advertisement in any public urinal, or so as to be visible to any person passing along any public street, etc., or delivering it or attempting to deliver it to any person so passing, or throwing it down the area of any house, is an offence punishable on summary conviction (*ib.* s. 3); so also is procuring any other person to do any such thing (*ib.* s. 4). See also VENEREAL DISEASE.

Indecent Assault. Indecent assault upon any female is punishable with not more than two years' imprisonment (Offences against the Person Act, 1861, s. 52) and so also is indecent assault upon any male person (*ib.* s. 62). The Criminal Law Amendment Act, 1922, s. 1, provides that "it shall be no defence to a charge or indictment for an indecent assault on a child or young person under the age of sixteen to prove that he or she consented to the act of indecency." If, therefore, a male over sixteen consents to an indecent assault by another male person there can be no conviction under s. 62 of the Act of 1861; but in such cases both parties can be convicted of gross indecency (Criminal Law Amendment Act, 1885, s. 11).

A verdict of indecent assault may be returned against any prisoner charged with carnal knowledge or attempted carnal knowledge of a girl under thirteen (see CARNAL KNOWLEDGE) or with rape (Criminal Law Amendment Act, 1885, s. 9).

Indecimable. Not subject to tithe (2 *Inst.* 240).

Indefensus. In the thirteenth century this

meant one who, being impleaded, refused to make answer.

Indefinite Payment. See APPROPRIATION.

Indefinitum equipollet universali (*Vent.* 308). (The indefinite is equivalent to the universal.) This maxim was cited by the King's Bench in deciding (upon the analogy of the case mentioned at IDEM SEMPER, ETC.) that "the said" must be taken as referring to each of several antecedents and not merely to the last of them. But the general rule is really that embodied in INCERTA QUANTITAS; ETC.

Indemnify; Indemnification. To indemnify is to make good a loss which one person has suffered in consequence of the act or default of another; and the operation of making good the loss is called indemnification. (See Mercantile Law Amendment Act, 1856, s. 5.) Thus, if A fails to pay a debt which he owes to B, and a surety, C, pays it, C is said to indemnify B, and B is said to obtain indemnification. So if A wrongfully causes a loss to B, A is liable to indemnify B for the loss which he has sustained. A promise to indemnify is the same thing as an indemnity or guarantie (q.v.), and hence "to indemnify" sometimes signifies "to give an indemnity," that is, "to promise to indemnify:" thus, a person to whom an indemnity is given is said to be indemnified. See DAMNIFY.

Indemnity. An indemnity is a collateral contract or security to prevent a person from being damnified by an act or forbearance which he does at the request of the indemnor. Thus, if A agrees not to sue B for a debt during a certain period in consideration of a promise by C to repay him any loss which he may suffer from not suing B at once, C's promise constitutes an indemnity.

Settlements and wills used formerly to contain a provision that the trustees should not be liable for the acts or defaults of their co-trustees, or of any agent, banker, etc., but should only be liable for what they actually receive, and for their own acts and neglects. But it became customary to omit this provision after it had been enacted by the Law of Property Amendment Act, 1860, s. 31 (now repealed and replaced by the Trustee Act, 1893, s. 24) that every will, etc., should be deemed to contain a clause to the like effect.

See ACT OF INDEMNITY; GUARANTEE.

Indent; Indenture. To indent a document was to cut the top of the first page or sheet in a toothed or waving line. The most usual instance of this was in the case of a deed indented or indenture (*infra*), but it is also done in other cases: thus the inquisition under an elegit (q.v.) was indented.

An indenture is a deed made between two or more parties, *e.g.*, an ordinary conveyance, lease, mortgage, settlement, etc. Formerly it was usual when a deed was made between two parties to write two copies of it on one piece of parchment or paper, and then to cut it in two in an indented or toothed line, so that each copy of the deed fitted the other and could thus be identified. Now a deed purporting to be an indenture has the effect of an indenture, although not actually indented (Real Property Act, 1845, s. 5).

Indentures were formally called bipartite, tripartite, quadripartite, etc., according as they were made in two, three, or four parts: but all the parts of an indenture have always been only one deed in law. See DEED.

Index animi sermo est. (Words are the indication of intention.) And so no statute can be construed in a way repugnant to its express words.

Indian Empire, Order of. The Most Eminent Order of the Indian Empire was founded in 1878 in connection with the assumption by Queen Victoria of the title of "Empress of India." It includes Knights Grand Commanders (G.C.I.E.), Knights Commanders (K.C.I.E.), and Companions (C.I.E.).

India Office. The Government department of which the minister known as the Secretary of State for India is the head. See SECRETARY OF STATE.

Indicatif. This would appear to be a corruption of *indicavit* (q.v.).

Indicavit. A writ in the nature of a prohibition which formerly lay to restrain the ecclesiastical courts from adjudicating in tithe cases involving rights of patronage. The patron of the clerk whose proceedings were restrained by the writ could, in his turn, sue out a writ *de advocatione decimarum*, in order that the proceedings in the ecclesiastical court might continue.

Indictment is a written accusation of one or more persons of a crime, presented on oath by a grand jury. Down to 1916 indictments were highly technical in form, but the Indictments Act, 1915, abolishes all the old technicalities: see in particular, r. 4 (4) in Schedule I., which provides that "particulars of such offence shall be set out in ordinary language in which the use of technical terms shall not be necessary." The indictment is preferred (that is, laid before) the grand jury under the technical name of a bill; the witnesses in support of the charge are then

examined, and if the offence appears to a majority of the jury (consisting of twelve at least) to be sufficiently proved to put the offender on his trial, they indorse on the indictment "true bill"; the indictment is then said to be found, and the offender stands indicted and must be arraigned (q.v.). If the majority think that the offence has not been sufficiently proved, they indorse "No true bill," "Not a true bill" or "Not found," on the indictment, and the accused person is then discharged. Strictly speaking, the indictment is not so called until it has been found a true bill. See AMENDMENT; COUNT; PRESENTMENT; INQUEST; JURY; VENUE; IGNORAMUS.

Indictor; Indictee. These words meant respectively the person by whom and the person against whom an indictment was presented.

Indifferent. In the law this means without any interest which might prevent impartial adjudication.

Indivisum. That which is held by two persons in common without partition: each of them hold *pro indiviso* (q.v.).

Indorse; Indorsement. To indorse is to write something on the back of an instrument. "Indorsement" signifies either the act of indorsing, or the writing itself.

When a deed to be executed has reference to a transaction already embodied in a deed between the same parties, or some of them, or their predecessors in title, it frequently saves the repetition of many recitals and provisions to make the terms of the new deed refer to those of the former one, and to indorse it on that instrument; thus, the reconveyance of mortgaged property is frequently indorsed on the mortgage, and an appointment of new trustees on the settlement or other instrument creating the trust. A supplemental deed (q.v.) is used as a substitute for an indorsed deed if for any reason indorsement is impracticable.

Indorsement is also an important mode of transferring bills of exchange, cheques, bills of lading, and similar documents, and is effected by the person to whose order the document is payable writing his name on the back and delivering it to the transferee. An indorsement consisting merely of the indorser's name, is called an indorsement in blank; when it specifies the name of the person (the indorsee) to whom the document is transferred or indorsed, it is called a special indorsement, or an indorsement in full. An indorsement in blank makes the instrument payable to bearer; a special indorsement makes it payable to the order of the person named in the indorsement. As to the liability of an indorser, see BILL OF EXCHANGE.

The following kinds of indorsement seem, in practice, to be peculiar to bills of exchange and promissory notes.

An indorsement without recourse (*sans recours*) is where an indorser declares that he shall not be liable if the bill, etc., is dishonoured by the antecedent parties. A conditional indorsement is one made before acceptance, in such a form as to impose on the drawee accepting the bill a liability not to pay the bill except in a particular event. A restrictive indorsement is where the bill is expressed to be indorsed to a person for a particular purpose (*e.g.*, "Pay to A. B. for my account"), and prevents him from negotiating it. A qualified indorsement is where one who is under an obligation to indorse in a representative capacity indorses in such a way as to deny personal liability.

As to indorsements on WRITS OF SUMMONS, see that title.

Inducement. Introductory statements in a pleading which are made to lead up to and explain the matter in dispute are known as "matters of inducement."

Induction, in ecclesiastical law, is the ceremony by which an incumbent who has been instituted to a benefice is vested with full possession of all the profits belonging to the church, so that he becomes seised of the temporalities of the church and is then complete incumbent. It is performed by virtue of a mandate of induction directed by the bishop to the archdeacon, who either performs it in person, or directs his precept to one or more other clergymen to do it. See INSTITUTION; COLLATION.

Indulto; Indult. An authorisation by the Pope for the doing of something which the canon law does not sanction. A common instance is the Lenten indult by which a bishop is authorised to mitigate the rigour of the Lenten fast. Since the Reformation, our law, of course, knows nothing of indults.

Industrial Assurance Company. The Collecting Societies and Industrial Assurance Companies Act, 1896, s. 1, defines an industrial assurance company as meaning "every such . . . person or persons, whether corporate or unincorporate, granting assurances on any one life for a less sum than £20, . . . as receives . . . premiums by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the . . . company and . . . at

less periodical intervals than two months." The Act regulates the business of such companies.

An industrial assurance company may issue policies for money to be paid for the funeral expenses of a parent, grandparent, grandchild, brother or sister; and no policy effected before 3rd December, 1909, is void if it was effected to cover such expenses as might be reasonably anticipated in connection with the death or funeral of a person in whose life the assurer had no insurable interest (Insurance Companies Act, 1909, ss. 36 (1) (2), 38).

Industrial and Provident Societies. These are societies which are regulated by the Industrial and Provident Societies Acts, 1893 to 1913. The Act of 1893, which repealed, re-enacted, and amended the previous legislation on the subject, defines (s. 4) an industrial and provident society which may be registered under that Act as "a society for carrying on any industries, businesses or trades specified in or authorized by its rules, whether wholesale or retail, and including dealings of every description with land," and provides that no member, other than another such registered society, may have an interest exceeding £200 in the shares of such society, and that the business of banking is to be carried on subject to the provisions of the Act; for those provisions, see ss. 19, 62 (4) and Sch. II., r. 6. Such a society (which must consist of seven persons at least (*ib.*, s. 5)), when registered under the Act becomes a body corporate with limited liability (s. 21), and with the word "limited" as the last word in its name (s. 5), and is regulated by rules, providing for the holding of meetings, the appointment of officers, the mode in which the profits are to be applied, etc. (s. 10, Sch. II.). Down to 1918 such societies, subject to compliance with certain conditions, were, under s. 24 of the Act, of 1893, exempted from income tax, but that section was repealed by the Income Tax Act, 1918, s. 238, Sch. 7. Section 1 of the Act of 1913 sanctions the registration of a society consisting of two or more societies registered under the Act of 1893.

Industrial and provident societies originated in the adoption of the principle of co-operation by working men for the purpose of buying goods for their own consumption at wholesale prices and selling them among themselves at a price sufficient to pay the expenses and realise a small profit. Many such societies also offer inducements for saving, by having the capital divided into shares of a small amount payable by weekly or monthly instalments. Sometimes part of the profits is applied in paying interest at a certain rate on the shares, and the balance for any purpose authorised by the Friendly Societies Acts Sometimes also the shares are not transferable, but the investment of each member is accumulated for the benefit of his family.

See BUILDING SOCIETIES; FRIENDLY SOCIETIES; DISSOLUTION; NOMINATION.

Industrial School. An "'industrial school' means a school for the industrial training of children in which children are lodged, clothed and fed as well as taught" (Children Act, 1908, s. 44). Such a school is a "certified industrial school" if certified by the Secretary of State as fit for the reception of children (*ib.*, s. 45 (1)). A "day industrial school" is a school in which industrial training, elementary education, and one or more meals a day, but not lodging, are provided for children (*ib.*, s. 77), and such a school, if certified by the Secretary of State as fit for the reception of children is a certified day industrial school. As to the powers of Courts to send children to industrial or day industrial schools, see ss. 58, 78 (1). See CHILD; REFORMATORY.

Industriam, Per. See ANIMALS FERÆ NATURÆ.

Inebriates. See HABITUAL DRUNKARDS.

Ine, Laws of. The earliest laws of the Kingdom of Wessex. They were probably promulgated between 688 and 694. Here are some of them:—

"If any one within the borders of our Kingdom commits an act of robbery or seizes anything with violence, he shall restore the plunder and pay a fine of 60 shillings."

"The wergeld of a Welsh horseman who is in the King's service and can ride on his errands shall be 200 shillings."

"If anyone destroys a tree in a wood by fire, and it becomes known who did it, he shall pay a full fine. He shall pay 60 shillings, because fire is a thief."

The full text of the laws, with an English translation, will be found in *The Laws of the Earliest English Kings*, edited by F. L. Attenborough (1922), at p. 36.

In eo, quod plus sit, semper inest et minus (*D.* 50, 17, 110). (The greater always includes the less.) See IN MAJORE, ETC.

In esse. Actually existing, as distinguished from *in posse* (q.v.) and *in futuro* (q.v.).

Inevitable. An accident is in law inevitable when it cannot be avoided by the exercise of ordinary care, caution, and skill.

Infamous Conduct. The General Coun-

cil (q.v.) may erase from the register of medical practitioners the name of any practitioner whom they adjudge to have been guilty of conduct infamous in any professional respect (Medical Act, 1858, s. 29). Any conduct in the course of the profession which would reasonably be regarded as disgraceful or dishonourable by competent practitioners of good repute is "infamous." If the council, acting *bonâ fide* and after due inquiry, adjudge any practitioner to have been guilty of such conduct, the Courts have no jurisdiction to review their decision. It is to be noted that erasure does not disqualify a practitioner from practising; but (see the Medical Act, 1886, s. 6) it prevents him from recovering his fees by legal proceedings.

The council can also erase from the dentists' register the name of any person registered therein on proof that he has been guilty of any "infamous or disgraceful conduct in a professional respect" (Dentists Act, 1878, ss. 2, 11, 13).

The Royal College of Veterinary Surgeons (q.v.) possess analogous powers of removing from their register the name of any member guilty of misconduct.

See APOTHECARIES; CHEMISTS.

Infamous Crime. This expression was defined by the Larceny Act, 1861, s. 46, as meaning "the abominable crime of buggery, committed either with mankind or with beast, and every assault with attempt to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime." That section, together with ss. 44, 47, 48, 49 of the Larceny Act, 1861, is repealed by the Larceny Act, 1916, s. 48 (1), Sch., and all these repealed sections are substantially re-enacted by s. 29 of the Act of 1916, which however does not use the expression "infamous crime." That expression has consequently ceased to have a technical meaning. See BLACKMAIL.

Infamy. Under the common law a person convicted of forgery, perjury, gross cheats, or other such offences and against whom judgment had been pronounced in pursuance of such conviction was incompetent to give evidence. He was said to have incurred infamy. This disqualification was removed by the Civil Rights of Convicts Act, 1828, s. 3, and by the Evidence Act, 1843, s. 1, the combined effect of which enactments is that no witness is disqualified by any conviction. But of course the fact of his conviction may be put to him in cross-examination.

Infangtheft. This was the right to hang a thief caught "hand having or back-bearing" the stolen goods upon one's own land. It originated in very early times, and gradually fell into disuse—about the thirteenth century—as the royal Courts asserted their authority. It had originated in Anglo-Saxon times; and the right was given by a grant from the king. Compare HALIFAX GIBBET LAWS; HANDHABEND; OUTFANGTHEFT.

Infant is a person under the age of twenty-one years.

Infants are subject to various disabilities imposed on them for their protection: thus an infant cannot, as a rule, alien his lands, or make a deed or contract binding on him, and he cannot, unless he be a soldier on actual military service or a mariner at sea, make a valid will under any circumstances. He may, however, contract for necessaries (q.v.). Formerly the contracts of an infant not binding on him were voidable only, and therefore capable of being ratified by him after attaining majority: but this is no longer so, the Infants Relief Act, 1874, ss. 1, 2, having made such contracts absolutely void. So an infant under the age of seven years cannot be guilty of felony; under the age of fourteen he is conclusively presumed—even though the facts negative the presumption—to be incapable of rape; between the ages of seven and fourteen he is presumed to be *doli incapax* (incapable of discerning between good and evil) until the contrary is shown; and, under the age of sixteen, he cannot be sentenced to death (Children Act, 1908, ss. 103, 131). An infant of fourteen years, if a male, and of twelve years, if a female, may give the consent required (among other things) to make a valid marriage: but a promise to marry at a future time is not binding on an infant under twenty-one. See BREACH.

An infant may in some cases act in a representative capacity or in *auter droit*, in the same manner as a person *sui juris*. Thus an infant may act as an agent or as an attorney under a power, and it seems that an infant may also exercise a power of appointment over personal estate, although not over real. See EXECUTOR; GRANT; GUARDIAN; TRUSTEE.

In probate practice an infant is a person under the age of seven years, as opposed to a minor, who is a person between the age of seven and twenty-one years. See GUARDIAN.

An infant under fourteen cannot in general be on licensed premises (Children Act, 1908, s. 120 (q.v.)); and he cannot have or carry any firearm (Firearms Act, 1920, s. 3), or hold any motor licence (Motor Car Act, 1903, s. 3 (5)), and under seventeen he can hold no motor licence except for a motor cycle (*ib.*). A pawnbroker commits an offence if he takes a pledge from a child apparently under the age of fourteen (Children Act, 1908, 8 Edw. 7, c. 67, s. 133 (12)); but it is a good defence to prove that the child was in fact fourteen (*ib.*, s. 123 (4)). The Betting and Loans (Infants) Act, 1892, makes it penal to incite infants either to bet or borrow money.

See WARD OF COURT; SETTLEMENT; NECESSARIES; FEOFFMENT; GUARDIAN; HABEAS CORPUS.

Infanticide. Colloquially, this means the killing of an infant soon after its birth: but down to 1922 no such offence as infanticide was formally recognised by the law. The law had, however (see BIRTH, CONCEALMENT OF), provided one means by which, in a certain state of facts, a jury could avoid a verdict of murder where a woman was charged with what is popularly known as infanticide: in other cases juries not infrequently took the law into their own hands and returned a verdict of manslaughter—or acquitted—where a woman was charged with the murder of her newly-born infant; and, even where there was a verdict of murder, it had been for many years customary to commute the capital sentence in the case of an infant being killed by its mother. The Infanticide Act, 1922, while expressly preserving the right of a jury to bring in a verdict of manslaughter or of concealment of birth, or of (see INSANITY) guilty but insane, provides that where a woman causes the death of her newly-born child before she has fully recovered from the effect of child-birth and while the balance of her mind is still disturbed, then she shall be guilty of infanticide and punishable as for manslaughter, if before the Act she might have been convicted of murder.

In favorem vitæ libertatis et innocentiæ omnia præsumuntur (*Lofft*, 125). (In favour of life, liberty, and innocence all possible presumptions are made.)

Infectious Diseases. It is a common law misdemeanour to expose in a public place any person, whether such person be the accused himself or another person, who is suffering from an infectious disease.

The notification and prevention of infectious diseases is provided for by the Public Health Act, 1875, ss. 120-139, the Infectious Diseases Notification Act, 1889, 52 & 53 Vict. c. 72, the Infectious Diseases Prevention Act, 1890, the Infectious Diseases (Notification) Extension Act, 1899, and the Public Health Acts Amendment Act, 1907, Pt. IV. See also DAIRIES.

Inferior Court. This means any Court other than the High Court, the Central Criminal Court (q.v.), or the Chancery (q.v.) Courts of Lancaster and Durham. The writs of *certiorari* (q.v.), *mandamus* (q.v.) and *prohibition* (q.v.) lie to an inferior Court: they do not lie from one superior Court to another. See COURTS; BOROUGH COURTS; BOROUGH SESSIONS; QUARTER SESSIONS; COURT OF SUMMARY JURISDICTION.

In fictione juris semper æquitas existit (11 *Rep.* 51). (Equity is manifest in every legal fiction.) See FICTIO LEGIS, ETC.

Infidels. It was anciently said that "infidels may not be witnesses by the laws of the kingdom because they believe neither the Old nor New Testament to be the Word of God, on one of which the oaths must be taken." Now "infidels" may affirm or take such oath as they declare to be binding. See AFFIRM; OATH.

In formâ pauperis. Under the statutes 11 Hen. 7, c. 12, and 23 Hen. 8, c. 15, s. 3, every poor person desirous of bringing an action who could swear that he had not property worth £5, except his wearing apparel and the subject-matter of the intended action, was to be allowed to bring his action without payment of the Court fees, and was to have assigned to him an attorney and counsel who acted for him without payment. The practice of the common law Courts, under these Acts, was adopted by the Courts of equity, and was extended by them to the case of defendants. The two enactments above mentioned were repealed by the Statute Law Revision and Civil Procedure Act, 1883, ss. 3, 4; and the matter is now regulated by the Rules mentioned under POOR PERSON (q.v.).

As to appeals *in forma pauperis* to the House of Lords, see the Appeal (Forma Pauperis) Act, 1893, which enables the House to refuse leave to prefer such an appeal where the appellant has no *prima facie* case.

Informant. This means a person who lays an information (q.v.) to recover a penalty recoverable by criminal proceedings or proceedings of a like nature. In summary proceedings the person who makes a complaint (q.v.) is known as a complainant, while

the person who lays an information is known as an informant.

Information. An information is in the nature of a pleading. It is the step by which several civil and criminal proceedings are commenced.

I. Civil proceedings by information were formerly brought either in Chancery or in the Court of Exchequer, according to the nature of the remedy sought.

A. As to informations in Chancery. When a suit in Chancery was instituted on behalf of the Crown or of persons partaking of its prerogative or under its particular protection (*e.g.*, a charity), the matter of complaint was offered to the Court by a document called an information, which was a statement of facts by the Attorney-General or other proper officer (the informant), resembling a bill of complaint (q.v.), except that it was not in the form of a petition. If the suit did not immediately concern the rights of the Crown, its officers depended on the relation of some person whose name was inserted in the information, and who was termed the relator (q.v.). It sometimes happened that this person had an interest in the matter of dispute, of the injury to which interest he had a right to complain. In this case his personal complaint was incorporated with the information given to the Court by the officer of the Crown; under the old practice they formed together an information and bill, and were so termed. When an information was filed by the Attorney-General upon his own authority it was sometimes called an information *ex officio*, as opposed to an information at the relation (q.v.) of a private individual. At the present day proceedings by information in the Chancery Division assume the form of an action by the Attorney-General, either *ex-officio* or at the relation of some person or corporation (see R. S. C. Ord. 1, r. 1).

There was also a proceeding called an English information in the Exchequer Division, under the equitable jurisdiction of the Court of Exchequer, so called because it was in the nature of a bill of complaint in equity, which was formerly called an English Bill. (See BILL OF COMPLAINT.) The originating proceeding in an equity suit instituted on behalf of the Crown on the Revenue side of the King's Bench Division is still known as an English information.

B. As to informations at common law:—The prerogative process of information was in the nature of a civil action at the suit of the Crown, and was instituted for the purpose of obtaining satisfaction in damages for some injury to Crown possessions, or to recover money due to or goods claimed by the Crown. The information was not founded on any writ, but merely on the intimation of the Attorney-General, who "gave the Court to understand and be informed of" the matter in question. The party was then put to answer by plea, which the Crown might traverse or demur to, etc., and trial was had as in suits between subject and subject. Informations were of three principal kinds:—An information of intrusion was in the nature of an action of trespass *quare clausum fregit*, and was brought for any trespass committed on the lands of the Crown. An information of debt (or information *in personam*) was brought upon any contract for moneys due to the Crown (though process by extent was more usual in such cases), or for any forfeiture due to the Crown upon the breach of a penal statute, especially when the revenue was concerned. An information *in rem*, or real information, lay where any goods were supposed to become the property of the Crown as derelict, and no man appeared to claim them, or where goods were forfeited for non-payment of excise duties. An information of *devenerunt* lay to recover goods belonging to the Crown which "have come into the hands" of a subject; it was in the nature of an action of detinue, and was either wholly or partly *in rem*. Informations of the kinds mentioned in this paragraph are now assigned to the King's Bench Division. (See HIGH COURT OF JUSTICE.) Informations of debt are by far the most common.

II. In criminal procedure, informations are of three kinds:

A. Those brought partly at the suit of the Crown and partly at that of a subject, to enforce a penalty or forfeiture under a penal statute; these are a sort of *qui tam* actions, only carried on by a criminal instead of a civil process. See PENAL ACTION.

B. Informations brought in the King's Bench Division in the name of the Crown alone; these are of two kinds. Informations by the Crown, filed *ex officio* by the Attorney-General, are available, but are seldom now employed, in the case of crimes which peculiarly tend to disturb or endanger the King's Government, or to molest or affront him in the regular discharge of his royal functions.

Informations filed by the Master of the Crown Office upon the complaint or relation of a private subject, are applicable for the punishment of any gross and notorious misdemeanours, such as riots, batteries, libels,

bribery, misconduct by magistrates, etc. The defendant then pleads to the information, and the trial and subsequent proceedings resemble those on an ordinary prosecution by indictment in the King's Bench Division, except that the preliminary inquiry by a grand jury is absent. See PLEADING; TRIAL; KING'S BENCH; QUO WARRANTO.

C. Proceedings before justices of the peace in matters of a criminal nature are commenced by an information, which is a statement of the facts of the case made by the informant or prosecutor, sometimes verbally, sometimes in writing, and either with or without an oath; when not upon oath, the information is said to be exhibited. See COMPLAINT.

Informer is a person who brings an action or takes some other proceeding for the recovery of a penalty of which the whole or part goes to him. A common informer is a person who sues for a penalty which is given to any person who will sue for it, as opposed to a penalty which is only given to a person specially aggrieved by the act complained of. (See PENALTY; PENAL.) And he also is any person who, in the exercise of the common law right to "inform" a Court, prosecutes for any offence, whether triable summarily or on indictment, which affects the public at large and with regard to which the right to prosecute has not been confined by statute to a particular person or class of persons.

See APPROVER; ACCOMPLICE; KING'S EVIDENCE.

Infortunium, Homicide per. (Homicide (q.v.) by misadventure.) This takes place where a man is lawfully doing an act and homicide accidentally results. At common law a person found guilty of homicide *per infortunium* was technically liable to forfeiture of all goods; but he received a pardon and a writ of restitution as a matter of course. Such forfeiture was abolished by the Offences against the Person Act, 1861, s. 7; and long before then a verdict of not guilty had become customary in such cases.

Infringement. When a person does an act which he has no right to do, and thereby interferes with the right of another person, he is said to infringe that right. Thus, when a person manufactures an article protected by a patent, or prints a book protected by copyright, or makes use of a trade mark without having the right to do so, he is said to infringe the patent, copyright, or trade mark. The remedy is an injunction to restrain future infringements, and recovery of the damages caused or profits made by the past infringements.

In futuro. (In the future): the converse of *in præsenti*.

In generalibus latet error. (Error lurks in generalities.)

Ingenuitas. Used in the Leg. Hen. 1, c. 9, as meaning freedom acquired by manumission (q.v.).

Ingenuitas regni. The freeholders of the realm. The title was sometimes applied to the *Magnum Concilium Regni* (q.v.).

In gremio legis. (In the bosom of the law). *In gremio legis* applies rather to matters which are not in the actual custody of the Court through its officers, but which are under its protection, while *in custodia legis* (q.v.) relates to things, such as money or title deeds, of which the Court has actual possession.

Ingress. The same as "entry," as the latter word is used in the expression "free entry, egress and regress" (q.v.).

Ingressu, De. A writ of entry (q.v.), also known as the writ *præcipe quod reddat*, which would seem to have been abolished by the Real Property Limitation Act, 1833, s. 36, although it is not amongst the list of writs specifically mentioned in that section.

Ingressus. Literally, an entry. It sometimes meant the relief (q.v.) paid by an heir upon attaining full age for entering upon his fee; in another context it meant a payment made by one to whom forfeited lands had been granted.

In Gross, as applied to a right, means that it is not appendant, appurtenant, or otherwise annexed to land. Thus, if A grants to B the right of feeding a certain number of cattle on his (A's) lands, B has a common of pasture in gross. See COMMON; EASEMENT; PROFIT; VILLEIN.

In the old books, money payable by a mortgagor of land is said to be in gross, as opposed to a rent issuing out of the land; and hence the old rule was that a mortgagor must tender the money to the person of the mortgagee, while it was sufficient to tender rent on the land itself.

As to powers in gross, see POWER.

Ingross. See ENGROSS.

Ingrossator magni rotuli. (The engrosser of the Great Roll). This was an ancient synonym of Clerk of the Pipe (q.v.).

Inhabitant. See CUSTOM; COURT LEET; EASEMENT; HUNDRED; POOR; RECREATION; RESIDENCE.

Inhabited house duty is an assessed tax

running (House Tax Act, 1851, Sch.; House Tax Act, 1871, s. 31; Customs and Inland Revenue Act, 1890, ss. 25, 26) from twopence to ninepence in the pound, on inhabited dwelling-houses, according to their annual value if such value exceeds £20 (House Tax Act, 1851, s. 1), and is payable by the occupier, the landlord being deemed the occupier where the house is let to several persons (House Tax Act, 1808, Sch. B). Where a house, so far as it is used as a dwelling-house, is used for the sole purpose of providing separate dwellings or "flats," then the value of any "flat" of the annual value of less than £20 is deducted from the value of the house for the purpose of the duty (Revenue Act, 1903, s. 11). Houses occupied solely for business purposes are exempt from duty, although a caretaker may dwell therein, and houses partially occupied for business purposes are to that extent exempt (Customs and Inland Revenue Act, 1878, s. 13). Houses belonging to the Royal Family, every public office for which the duty would be payable out of the public revenue, hospitals, charity schools, and houses for the reception or relief of poor persons, as well as houses occupied only by caretakers, are totally exempt (House Tax Act, 1808, Sch. B).

The tax is assessed on the rent or on the letting value of the house (House Tax Act, 1803, s. 10), but can never be assessed on less than the rateable value for poor rate (House Tax Act, 1808, Sch. B, vii.).

See WINDOW TAX.

Inhansing. The ancient designation of the effect of a royal proclamation declaring that the value of a coin should be raised although the weight and purity remained unchanged. For instances, see GOLD COINS: compare DEBASING.

Inheretrix is the old term for "heiress."

Inheritable is that which is capable of inheriting, that is, of taking land by descent. Thus, "blood inheritable," in the old books, means a capacity of inheriting by reason of consanguinity. (See BLOOD.) "Inheritable" is applied to the person, "descendible" to the estate or property. See FREEHOLD.

Inheritance is that which descends by way of the real representative (q.v.) to the heir of the owner on his death intestate. The term is not often used except in the expression "estate of inheritance" (see ESTATE), and in the following phrases:—

"No man," says Coke, "can institute a new kind of inheritance not allowed by the law." See DESCENT.

"If a man buy divers fishes," says Coke again, ". . . and put them in his pond, and dyeth, in this case the heire shall have them, and not the executors, but they shall goe with the inheritance."

"Inheritance" is also used in the old books where "hereditament" is now commonly employed; thus, Coke divides inheritances into corporeal and incorporeal, into real, personal and mixed, and into entire and several; as to these divisions, see HEREDITAMENT. The phrase "several inheritance," however, seems to be used in three senses: (i) in the sense of one of two hereditaments or estates which are unconnected the one with the other; (ii) in the sense of a sole estate, as opposed to an estate of coparcenery or other joint estate: thus, says Coke, "if a partition be made betweene two coparceners of one and the selfe-same land, that the one shall have the land from Easter untill Lammas to her and her heires, and the other shall have it from Lammas till Easter to her and her heires, or the one shall have it the first yeare, and the other the second yeare, *alternis vicibus*, etc., there it is one selfe-same land wherein two persons have severall inheritances at severall times"; (iii) to denote an estate free from the incident of survivorship, as opposed to joint tenancy: thus, "if lands be given to two men and to the heires of their two bodies begotten, in this case, the donees have a joint estate for term of their two lives, and yet they have severall inheritances." As to the meaning of this, see ESTATE TAIL.

See HÆREDITAS ALIA, ETC.

Inheritance Act, 1833. See DESCENT.

Inhibition. Under the Land Transfer Act, 1875, regulating the registration of land, an inhibition is an order or entry on the register inhibiting or forbidding for a given time, or until further order, any dealing with lands or charges registered under the Act. It resembles an injunction. See CAUTION; RESTRICTION.

In ecclesiastical law, an inhibition is (1) a writ forbidding a judge from further proceeding in a case depending before him, as where an appeal is brought against a sentence pronounced by him; (2) an order inhibiting or forbidding an incumbent to perform any service of the church or otherwise exercise the cure of souls for a certain period or until he obeys a certain monition or order (Public Worship Regulation Act, 1874, s. 13).

Under the practice of the Privy Council in admiralty appeals, before the Judicature Acts, as soon as the petition of appeal had been

lodged, an inhibition and citation might be issued prohibiting the Court below and the respondent from proceeding in the cause pending the appeal, and citing the respondent to enter an appearance to the appeal. Relaxation of the inhibition was a kind of writ dissolving the inhibition in cases where the appeal had not been prosecuted with due diligence. Admiralty appeals now lie to the Court of Appeal (Judicature Act, 1873, s. 18; Judicature Act, 1875, s. 4), and this practice is therefore obsolete.

In hiis quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti (10 *Rep.* 101). (In things that are favourable to the spirit, though injurious to the things, an extension of a statute should sometimes be made.) That is to say, a point is sometimes to be stretched in favour of an interpretation which is in accordance with the spirit though opposed to the letter of a statute.

In invitum. (Against a reluctant person.)

Initia. A corrupt form of ENITIA (q.v.).

Initials. Signature by initials is good for the purposes of the Wills Act, 1837, or of the Statute of Frauds. Ordinarily the Christian name of a defendant is set out in the title of a writ of summons (see Ord. 11, r. 3, and Sch. 1, Pt. 1, Form 1): but if the Christian name of the defendant be unknown he can be sued by his surname *simpliciter*: and in any case he can be sued by the initial or initials of his Christian name or names *plus* his surname.

Initiate, Tenant by the Curtesy. Where a man has a wife seised of an estate of inheritance this is the technical description applied to him after his wife has had a child, so that on his wife's death such man becomes tenant by the curtesy (q.v.).

In judiciis minori ætate succurritur (*Jenk. Cent.* 46). (In the decisions of the Courts help is given to a minor.) Compare SUCCURRITUR, ETC.

In judicio non creditur nisi juratis (*Cro. Car.* 64.) (In a trial no man's evidence is to be accepted unless he has been sworn.) This was said by the Lord Keeper regarding a claim by a peer that he should be allowed to give evidence upon his honour.

Injunction is an order or judgment by which a party to an action is required to do, or refrain from doing, a particular thing.

Injunctions are either restrictive (preventive) or mandatory. Thus, an injunction restraining a defendant from causing nuisance, or disturbing an easement, or committing waste, or infringing a patent, is a restrictive injunction, while an injunction ordering a defendant to take down or remove a wall or other obstruction is a mandatory injunction, or mandatory order, or more accurately a *mandamus*.

Injunctions are either *interim*, provisional (interlocutory) or perpetual. Provisional injunctions are such as are granted on interlocutory applications, and continue until a certain period, *e.g.*, until the trial of the action. The object of an interlocutory injunction is to preserve the property in dispute, with the least injury to all parties, until their rights can be finally determined. Perpetual injunctions are such as form part of the judgment or order made at the trial or hearing of the action, and, as their name denotes, are not restricted as to time.

Formerly, in cases of great urgency, an injunction was obtained *ex parte*, but this is not now always done, the practice in such cases sometimes being to grant what is called an *interim* order or injunction, by which the defendant is restrained until after a particular day named, liberty being given to the plaintiff to serve notice for an injunction for the day before the day so named.

Formerly, if a person was sued at law in circumstances which gave him a defence sustainable only in a Court of equity, the Court of Chancery would give effect to this defence by granting an injunction restraining the plaintiff from continuing his action. This mode of proceeding was abolished by the Judicature Act, 1873, s. 24 (5), the provisions of that Act relating to equitable defences having rendered it inapplicable. See EQUITY.

See UNDERTAKING; RESTRAINING ORDER; MANDAMUS; EASEMENT; PATENT; INFRINGEMENT; SPECIFIC PERFORMANCE; CAIRNS' ACT.

Injunctions of Edward VI. and Elizabeth. These were regulations as to the discipline and ritual of the Church of England which were published by Edward VI. in 1549 and by Elizabeth in 1559. They were especially directed against such things as savoured of popery. They were published without statutory authority and would appear to be without legal effect.

Injured Animals Act, 1907. This statute, which empowered the police to destroy injured animals in appropriate cases, was repealed by s. 18, Sch., of the Protection of Animals Act, 1911, and is replaced by s. 11 of the latter Act.

In jure non remota causa, sed proxima spectatur (*Bac. Max. Reg.* 1). (In law the proximate, and not the remote, cause is to

be regarded.) But this maxim does not always apply: see DOLUS CIRCUITU NON, ETC. As to where it in fact applies, see CAUSA PROXIMA NON, ETC., which is an abbreviated version.

In jure omnis definitio periculosa est. (In the law every definition is dangerous.) Compare IN GENERALIBUS LATET ERROR.

Injuria; Injury. In the technical sense of the word, an injury is where a right has been infringed. Hence "injury" is opposed to "damage," because a right may be infringed without causing pecuniary loss (*injuria sine damno*): thus the pollution of a clear stream is to a lower riparian proprietor both injury and damage, whilst the pollution of a stream already made foul and useless by other pollutions is an injury without damage, which would, however, at once become both injury and damage on the cessation of the other pollutions. See DAMNUM ABSQUE INJURIÂ.

Injuries are either legal or equitable. Legal injuries, or those formerly cognizable by the common law, are divided into breaches of contracts and torts (see those titles). Equitable injuries, or those formerly cognizable by the Courts of equity, include breaches of trust, equitable waste, and certain kinds of fraud.

Before the Judicature Acts the equitable remedies for legal injuries were specific performance and injunction, while damages (q.v.) were the ordinary legal remedy for such injuries. But see CAIRN'S ACT.

Injuria, De. In actions of trespass on the case and replevin, until the Common Law Procedure Act, 1852, came into force, the plaintiff's replication to the defendant's plea (see PLEADING) might be in the form known as *de injuriâ*, which averred that the defendant "of his own wrong and without the the alleged cause" had done the acts alleged as a defence. It operated as a general traverse (q.v.) and tender of issue.

Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata, maximè si fiat in exercente officium (3 *Inst.* 1). (An injury offered to a judge, that is to say, a person representing the King, is considered as offered to the king himself, especially if it be done in the exercise of his office.)

Injuria non excusat injuriam. (One wrong does not justify another.) That is to say, a wrongdoer is not, as such, necessarily precluded from bringing an action.

Injuria non præsumitur (*Co. Litt.* 232). (Wrongdoing is not to be presumed.) The rule is OMNIA PRÆSUMUNTUR LEGITIME, ETC. (q.v.).

Injustum est nisi tota lege inspecta una aliqua particula proposita judicare vel respondere (8 *Rep.* 117; *Wing.* 239). (Unless you have gone through the whole of a statute it is unreasonable to give either a decision or an opinion upon any particular thing laid down in it.) Compare OPTIMA STATUTI, ETC.

In jus vocare. Anciently this meant to take legal proceedings against a man.

Inlagation; Inlagary. In the time of Bracton this meant the restoration to the protection of the law of one who had been outlawed: and *inlagare* meant to reverse an outlawry.

Inland. See OUTLAND.

Inland Revenue. See COMMISSIONERS OF INLAND REVENUE.

Inlaw; Inlawry. When one subject to the king's allegiance was not an outlaw he was "inlaw": inlawry was the same as inlagation.

In loco parentis. A person is said to be *in loco parentis* towards an infant when he assumes towards the latter the moral obligation of making such a provision for him as his father would in duty be bound to make. The assumption of the character may be, and generally is, implied from the acts of the person putting himself *in loco parentis*, as where he pays for the maintenance and education of the infant or establishes him in life. The fact that the father of the child is living does not prevent another person putting himself *in loco parentis*, but if the child resides with the father and is maintained by him it affords an inference, though not a conclusive one, against the assumption of the character by another person.

A person *in loco parentis* is for many purposes treated as if he were the parent of the infant. Therefore the presumption in favour of advancement (as to which see ADVANCEMENT), and the presumption in favour of maintenance out of a contingent or deferred portion, apply to such persons.

In majore summâ continetur minor (5 *Rep.* 115). (In the greater sum of money is contained the less.) See IN EO, ETC.; IN TOTO, ETC.

In maleficiis voluntas, non exitus, spectatur (*D.* 48, 8, 14). (When acts *primâ facie* criminal are committed, regard must be had to the intention and not to the result). Thus, homicide may be justifiable or excusable, and so constitute no crime; or it may be manslaughter or murder and so constitute different crimes. But see AFFECTUS PUNITUR, ETC.

Inmate. In the sixteenth and seventeenth centuries this word was used as meaning one not being a member of a family, a guest or a servant, who was taken into a house, whether in return for payment or otherwise. Thus, the

statute 31 Eliz. c. 7, s. 6, enacted: "There shall not be any inmate, or more famylies or householdes than one, dwellinge or inhabitinge in anye cottage"; the object was to keep down the number of the poor in the parish.

In misericordia pro falso clamore suo. When judgment was given against the plaintiff in an action, he was, down to 1733 (see FRENCH), said to be *in misericordia pro falso clamore suo* (to be at mercy for his false claim). Compare EAT INDE SINE DIE. See AMERCIAMENT.

Inner Temple. See INNS OF COURT.

Innings. Lands reclaimed from the sea. See GAINAGE.

Innkeeper. An innkeeper is one who holds himself out as being prepared to receive and entertain travellers. An innkeeper—including the keeper of every tavern or coffeehouse in which lodging is provided—is bound to receive and entertain every traveller who presents himself for that purpose and is ready to pay his expenses, provided there be sufficient room in the inn, and no impropriety of conduct in the traveller himself. He is not, however, bound to keep for an indefinite period anyone who originally came as a traveller, but who, by lapse of time, has lost the character of a traveller. He is also responsible for the goods and chattels brought by any traveller to his inn, unless they are stolen from the traveller's own person, or by his own servant, or are lost by his own negligence. By the Innkeepers' Liability Act, 1863, s. 1, no innkeeper is liable for the loss or injury of any goods (not being a horse or carriage) to a greater amount than £30, except they are stolen, lost or injured through the wilful act, default or neglect of himself or his servant, or unless they have been deposited with him expressly for safe custody. A copy of the Act must be conspicuously exhibited in the inn, and the innkeeper is entitled to the benefit of the Act only while such copy is so exhibited (s. 3). See BAILMENT; BOARDING HOUSE; CARRIER; CARRIERS ACT.

An innkeeper has a lien on his guest's goods for payment of charges incurred by him, and he may sell them in satisfaction if they are left for six weeks without the charges being paid, provided he advertises notice of the intended sale (Innkeepers Act, 1878). See LIEN.

Innocent, as applied to conveyances, is the opposite of tortious (q.v.).

Innotescimus. See INSPEXIMUS.

Innovation. In the civil law this means the substitution of one obligation for another: the word is not known in this sense to our law.

Coke regarded all innovations with suspicion, saying (*Co. Litt.* 379) that "commonly a new invention doth offend against many rules and reasons . . . of the common law."

In novo casu, novum remedium apponendum est (2 *Inst.* 3). (To a new case a new remedy should be applied.) See UBI JUS, ETC.

Inns of Chancery were the buildings known as Clifford's Inn, Clement's Inn, Lyon's Inn, New Inn, the Strand Inn, Thavies' Inn, Furnival's Inn, Staple Inn, and Barnard's Inn, as well as two others—St. George's Inn and Simond's Inn—which had both disappeared before the time of Coke. They were originally a sort of collegiate houses, in which law students learnt the elements of law before being admitted into the Inns of Court (q.v.), but they ceased to occupy that position in the sixteenth century, and from about 1650 they were entirely in the hands of the attorneys, who, however, did not maintain them for any educational purposes; and during the nineteenth century the inns all ceased to exist as such. Staple Inn was sold in 1884 to an insurance company, who have preserved it practically intact. Clifford's Inn was sold in 1899 by the sixteen surviving members of the inn to a builder, who pulled down the greater part of it; and the residue, except the old hall, was for sale in 1921 as an "eligible building site"; the hall of Barnard's Inn forms part of the school of the Mercers' Company; the other Inns of Chancery have completely disappeared.

Inns of Court are certain private unincorporated associations in the nature of collegiate houses, having the exclusive privilege of calling to the bar, that is, conferring the rank or degree of barrister (q.v.). They are:—the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. They have a common "Council of Legal Education" for giving lectures and holding examinations. See BENCHER; HOSPITALLERS; MOOT; READER; INNS OF CHANCERY.

The four Inns of Court, like certain other places, such as the Charterhouse, Furnival's Inn, Staple Inn, and the Close of Westminster Abbey, were formerly, for the purposes of what would now be called local government, under the control of the bodies that owned them; but all of these places except the two Temples (see S. R. & O. 1900, No. 885) are now under the jurisdiction either of the City or of some metropolitan borough. Thus the Holborn Borough Council paves, etc., the courts of Gray's Inn: the benchers of the two

Temples themselves get the like work done within the Temples.

Innuendo is that part of an indictment in a criminal proceeding for libel, or of a pleading in an action for libel, which connects the alleged libel with its subject, or explains the meaning of words which are not on the face of them libellous. Thus if the libel complained of consisted of these words in a circular, "A. B. is a fit person to be a member of a certain society," and it was proved that the person who sent round the circular was the secretary of a society for the protection of tradesmen against swindlers, and that when he wrote to warn his correspondents against any person, he said, "He is a fit person to be a member of our society," it would be necessary in the declaration or statement of claim, after setting out the words "A. B. is a fit person to be a member of a certain society," to add, "meaning thereby 'He is a swindler'": these words form the innuendo.

In odium spoliatoris omnia præsumuntur (1 *Vern.* 19). (All possible presumption should be made against a wrongdoer.) The maxim was applied to the case of one who had wrongfully intermeddled with documents so that he might have abstracted some of them. See OMNIA PRAESUMUNTUR, ETC.

Inofficious Testament. A will which wholly passes over, without assigning sufficient reason, those having strong and natural claims on the testator. In the Roman law such a will raised a presumption of loss of memory or loss of reason and might be set aside: but any legacy, however small, prevented the presumption from arising. In English law no such presumption ever arose: but a mistaken idea that it did arise led formerly to the practice of giving a nominal legacy to ("cutting off with a shilling") a child or other relative whom the testator did not seek to benefit.

In omnibus quidem, maxime tamen in jure, æquitas spectanda sit (*D.* 50, 17, 90). (In everything, but especially in law, equity is to be regarded.) This was a maxim of the Roman law. The "law" and the "equity" referred to in it are not the entities known to our law.

Inops consilii. (Without advice: and especially, without legal advice.)

Inordinatus. Used in the thirteenth century as meaning intestate.

In pais, as applied to a legal transaction, primarily means that it has taken place without legal proceedings. Thus a widow was said to make a request *in pais* for her dower when she simply applied to the heir without issuing a writ. So conveyances are divided into those by matter of record and those by matter *in pais* (see CONVEYANCES). In some cases, however, "matters *in pais*" are opposed not only to "matters of record," but also to "matters in writing," that is, deeds, as where estoppel by deed is distinguished from estoppel by matter *in pais*. (See ESTOPPEL). It is not clear whether the phrase originally signified that the transaction in question took place on the spot, as in the case of a feoffment, which required livery of seisin on the land itself, or whether it denoted any place not being a Court. See COUNTRY; ACT IN PAIS.

— **In pari causâ possessor potior haberi debet** (*D.* 50, 17, 128). (As between two persons each having an equally strong claim to property, he who has possession of the property ought to be preferred.) See IN ÆQUALI JURE, ETC.

— **In pari delicto, potior est conditio possidentis (or defendentis)** (4 *T. R.* 564). Where both parties are equally in fault, the condition of the possessor (*or* defendant) is the best.) Where two persons are equally in fault, then he who actually possesses any property in dispute is to be preferred. Compare IN PARI CAUSA, ETC.

— **In pari materia.** In an analogous case.

Inpenny and Outpenny. In certain manors these were payments made on the alienation of copyholds. None of the modern writers mention them as being still made.

In Person. Anyone, whether plaintiff or defendant, can conduct his own case without employing a solicitor or counsel in any matter or action other than a motion for *mandamus*. If he does this, he is said to appear in person. But neither a next friend (q.v.) nor (see Ord. 16, r. 18) a guardian *ad litem* can personally conduct the case of anyone whom he represents. In summary proceedings, every complainant or informant (Summary Jurisdiction Act, 1848, s. 12), and every defendant (*ib.* s. 14), may conduct his case in person.

In personam; In rem.—I. In the Roman law, from which they are taken, the expressions *in rem* and *in personam* were always opposed to one another, an act or proceeding *in personam* being one done or directed against or with reference to a specific person, while an act or proceeding *in rem* was one done or directed with reference to no specific person, and consequently against or with reference to all whom it might concern, or "all the world." The phrases were especially applied to actions, an *actio in personam* being the remedy where a claim against a specific person arose out of

an obligation, whether *ex contractu* or *ex maleficio*, while an *actio in rem* was one brought for the assertion of a right of property, easement, status, etc., against one who denied or infringed it.

II. From this use of the terms they have come to be applied to signify the antithesis of "available against a particular person" and "available against the world at large." Thus, *jura in personam* are rights primarily available against specific persons, *jura in rem* rights only available against the world at large. (See RIGHT). So a judgment or decree is said to be *in rem* when it binds third persons; such is the sentence of a Court of Admiralty on a question of prize, or a decree of nullity or dissolution of marriage (see JUDGMENT), or a decree of a Court in a foreign country as to the status of a person domiciled there.

III. Lastly, the terms are sometimes used to signify that a judicial proceeding operates on a thing or a person. Thus it used to be said of the Court of Chancery that it acted *in personam* and not *in rem*, meaning that its decrees operated by compelling defendants to do what they were ordered to do, and not by producing the effect directly. Hence the Court had (and therefore the High Court now has) jurisdiction to deal with a question affecting land situate in a foreign country, if the question can be settled by enforcing the decree or order against a person within the jurisdiction. It is in this sense that admiralty actions are divided into actions *in rem* and *in personam*, an action *in rem* being one in which the ship or other property out of which the cause of action arises (the *res*) is arrested as security for the performance of an obligation, while in an action *in personam* the performance of the obligation can only be enforced against the defendant personally.

In pœnalibus causis benignius interpretandum est (*D.* 50, 17, 155). (In matters relating to penalties the interpretation of the law should incline towards leniency.)

In posse. A thing which does not actually exist, but which may exist, is said to be *in posse*. Compare IN FUTURO; IN ESSE.

In præsenti. (At the present time): the converse is *in futuro*.

In præsentiâ majoris cessat potentia minoris (*Jenk. Cent.* 214). (In the presence of the greater, the power of the inferior ceases.) And so no commissioners of oyer and terminer could sit during term time in the county of Middlesex, because the King's Bench sat there, but such commissioners could, at any time, sit in the City of London, because the King's Bench did not sit there: see 9 *Rep.* 118 *b*.

In propria persona. (In his own proper person.)

Inquest originally meant the same as inquisition (q.v.), but at the present day it is almost exclusively used to signify an inquiry held by a jury before a coroner as to the death of a person who has been slain, or has died suddenly, or in prison, or under suspicious circumstances. It is held *super visum corporis*, that is, after the jury have viewed the body of the deceased, and the evidence is given on oath. If the jury by their verdict or inquisition find a person guilty of murder or other homicide, such an inquisition is in all respects equivalent to an indictment (q.v.). See CORONER; PARCHMENT.

Inquest of Office, or simply "office," as it is termed in the old books, is a prerogative remedy for the benefit of the Crown, which was formerly much in use. It was an inquiry made by a jury before a sheriff, coroner, escheator, or other officer of the Crown, or by commissioners specially appointed, concerning any matter that entitled the Crown to the possession of lands or tenements, goods or chattels, *e.g.*, by reason of an escheat, forfeiture, idiocy, etc. (See INQUISITIO POST MORTEM; INQUISITION.) These officers were of two sorts, either of entitling, or of instruction. An office of entitling (which formerly issued out of Chancery) was used where the Crown did not become entitled to the property until after an office had been taken; thus, if the Crown claimed the land of an idiot, the person had first to be found an idiot by office. The office of instruction (which formerly issued out of the Exchequer) was used in cases where an office was not necessary to entitle the Crown, but merely for the better instruction of the officer before seizure, and to prevent hasty measures being adopted against the subject.

As to the remedy of any person aggrieved by an office found, see TRAVERSE; MONSTRANS DE DROIT; and Crown Suits Act, 1865, s. 52.

The Queen's Remembrancer Act, 1859, s. 25, provides that where the right of re-entry in any hereditaments shall have accrued to the Crown, it may be exercised without office found. This made inquests of office much less usual; the abolition (see ATTAINDER) of forfeiture on conviction of felony still further diminished the number; and the Escheat Procedure Act, 1887 (see ESCHEATOR) made the inquest of office almost entirely obsolete in cases of escheat. See OFFICE FOUND.

Inquiry.—I. In actions in the High Court it frequently happens that certain facts subsidiary to the main question in issue can be conveniently ascertained out of Court by a person appointed or directed to inquire into them. By the Arbitration Act, 1889, s. 13, general power is given to the Court to refer any question in a cause to an official or a special referee for inquiry and report (see ARBITRATION; REFEREE). But in the cases where an inquiry is usually directed, the practice divers according as the action is in the Chancery or the King's Bench Division.

In the Chancery Division an inquiry is usually directed in every action in which, after the Court has pronounced an order, judgment or decree, it becomes necessary to ascertain in detail the facts of the case or the rights of persons interested. In such a case the order, decree, etc., directs an inquiry on those points to be taken in chambers. Thus, in an action for the administration of the estate of an intestate, the administration order almost invariably directs inquiries as to the heir at law, next of kin, real and personal estate, debts, etc., of the deceased; and in an action to restrain the continuance of an injury (*e.g.*, the infringement of a patent), there is commonly an inquiry either as to the amount of damages sustained by the plaintiff, or as to the amount of profits made by the defendant in consequence of the acts complained of. The inquiries are taken before a Master, who investigates the evidence adduced by the parties, and embodies the result in his certificate (q.v., and see ACCOUNT). In the King's Bench Division the procedure by inquiry is used in cases where the plaintiff has obtained judgment by default against the defendant for an unliquidated claim (*e.g.*, for damages), so that it is necessary to ascertain what is due to him; if the amount is substantially a matter of calculation (as in an action for the arrears of an annuity), an inquiry as to the amount is directed to be taken by an officer of the Court (Ord. 36, r. 57); in other cases, a writ of inquiry (q.v.) must issue. See ORDER OF REFERENCE.

II. In lunacy practice an inquiry is the proceeding in which the unsoundness of mind of an alleged lunatic and his incapacity to manage himself and his affairs are investigated (Lunacy Act, 1890, s. 90) by the evidence of witnesses and the personal inspection of the alleged lunatic. The inquiry, which resembles the trial of an action (see TRIAL), is held before a Master in Lunacy (with a jury—see s. 91—if the alleged lunatic demands one), by virtue of the order of the judge in lunacy for inquiry; which is now issued in case of alleged lunacy in lieu of a special commission. But the judge may, under s. 94, direct an issue whether the alleged lunatic is of unsound mind, etc., to be tried in the High Court and the verdict of the jury on such trial has the same force as an inquisition. See COMMISSION; INQUISITION; TRAVERSE.

There are many cases in which the Board of Trade holds inquiries. See, for instance, BOILERS.

As to inquiries under the Lands Clauses Act, 1845, see INQUISITION.

Inquiry, Writ of, is one of the modes of assessing damages when interlocutory judgment (*e.g.*, by default in appearance or pleading) has been obtained by the plaintiff in an action for unliquidated damages. It is usually executed by the sheriff or under-sheriff and a jury of twelve, much in the same manner as an ordinary trial. When the damages have been assessed, the writ, return and inquisition are filed and final judgment signed. See Ord. 36, r. 56. See JUDGMENT; REFERENCE.

Inquisitio comitatus Cantabrigiensis. This is a document, probably written before the year 1200, which appears to be a copy of the original returns made as regards the county of Cambridge for the Domesday (q.v.) survey.

Inquisitio Eliensis. This is a record of an inquiry made towards the end of the reign of William the Conqueror into the manner in which the Domesday (q.v.) survery had been conducted as regards the Isle of Ely. The existing document, which is preserved in the British Museum, dates from about the end of the twelfth century. See LIBER ELIENSIS.

Inquisitio geldi. This was an inquest or inquiry made in 1085 by order of William the Conqueror, as to the persons liable to Danegeld (q.v.). No complete copies of the original returns made in the course of the enquiry are known to exist; but the information collected formed the groundwork of Domesday (q.v.), and some of the returns are transcribed in the Exon Domesday (q.v.).

Inquisitio post mortem was an inquest of office (q.v.) held upon the death of a tenant of the Crown to inquire of what lands he died seised, who and of what age was his heir, in order to entitle the Crown to his marriage, wardship, livery, primer seisin, etc. After the abolition of the feudal tenures the *inquisitiones post mortem* were held to inquire into cases of escheat, forfeiture, etc., of Crown lands, but they have now fallen into disuse, principally owing to the abolition of forfeiture (q.v.).

Inquisition means (i) an inquiry by a jury, held before an officer or commissioner of the Crown; and (ii) a formal document recording the result of the inquiry. The commonest instances of extrajudicial inquisitions at the present day are coroners' inquests and inquisitions to assess the value of land taken by a railway or other company under compulsory powers: these latter are held before the sheriff (or in some cases the coroner) of the county in which the lands are situated (Lands Clauses Consolidation Act, 1845, ss. 39-55).

Inquisitions are also held in the course of judicial proceedings, *e.g.*, under writs of *elegit* (q.v.) and extent (q.v.), and in lunacy. In lunacy, "inquisition" means the same as "inquiry" (q.v.); but it also denotes the formal statement and finding, under the hands and seals of the master and jury (if there was one) before whom the inquiry was held, giving the result of it, *e.g.*, stating (see Lunacy Act, 1890, s. 98) that the alleged lunatic is of unsound mind and incapable of managing himself and his affairs, or incapable of managing himself but capable of managing his affairs, and the lunatic is then called a "lunatic so found."

The proceedings in the course of which the *ex officio* oath (q.v.) was administered were in effect inquisitions of a stringent nature.

See AD QUOD DAMNUM; INQUEST; INQUEST OF OFFICE; TRAVERSE.

Inquisitor. This term was anciently applied to coroners, sheriffs and other officers empowered to hold inquisitions.

In quo quis delinquit, in eo de jure est puniendus (*Co. Litt.* 233). (In that in which anyone offends, in that according to law is he to be punished.) And so if a forest officer was guilty of an offence against the forest law he forfeited the office which he held under that law.

In re. (In the matter of.) Used in Chancery and bankruptcy to indicate the particular estate, person or matter to which such proceedings relate.

In re dubiâ magis inficiatio quam affirmatio intelligenda (*Godb.* 37). (In a doubtful case the negative is rather to be understood than the affirmative.) Compare EI INCUMBIT, etc.

In rem. See IN PERSONAM.

In republicâ maximè conservanda sunt jura belli (2 *Inst.* 58). (The rights recognised in war should be carefully preserved in the State.) This is cited in connection with the treatment accorded in war to enemy merchants.

In restitutionem, non in pœnam hæres succedit (2 *Inst.* 198). (The heir succeeds to the restitution, not to the penalty.) The restitution was that enjoined by the Statute of Westminster I., c. 19, and the penalty was that imposed by the same enactment.

Inrolment. See ENROLMENT.

Insanity is not, strictly speaking, a legal term, but it is commonly used to denote that state of mind which prevents a person from knowing right from wrong, and therefore from being responsible for acts which in a sane person would be criminal. Insanity may be total, or partial (where it is confined to certain subjects), or intermittent (where the attacks are separated by lucid intervals), and the question of responsibility depends upon whether the act was done under the influence of insanity or not. The term is also sometimes used with reference to the question whether a person has the mental capacity for entering into a contract, making a will, or the like. See DELUSIONS; LUNATIC.

The word "insane" is used in the verdict which is to be returned by a jury who find that a prisoner committed the act charged, but that he was insane when he committed it (see the Trial of Lunatics Act, 1883, s. 2), and in the verdict which they return if a prisoner is found to be insane when arraigned (see the Criminal Lunatics Act, 1800, s. 2).

A prisoner found by a jury, under the Act of 1800, to be insane when he is arraigned, may be detained under that Act during His Majesty's pleasure; and a prisoner found by a jury to have been insane when he committed the crime may be detained in like manner under the Act of 1883.

The Secretary of State may order that any prisoner be removed from prison to an asylum if (*a*) he is a prisoner (not under sentence of death) who has been examined at the request of the visiting committee by two medical practitioners and who has been certified by such practitioners to be insane, or if (*b*) he is a prisoner under sentence of death, whom there is reason to believe insane and who, having been examined at the request of the Secretary by two medical practitioners, has been certified by them to be insane (Criminal Lunatics Act, 1884, s. 2).

Where it is certified by two medical practitioners that any person detained as a criminal lunatic (other than a person found by a jury to have been insane when he committed the crime with which he was charged) is sane, then the Secretary may remit such person to prison "to be dealt with according to law" (Criminal Lunatics Act, 1884, s. 3). The effect of this enactment is that, theoretically, a prisoner who had been sentenced to death may then be

executed in pursuance of the sentence; but as a matter of course, the sentence would in such a case be commuted to the sentence of penal servitude for life.

The word "insane" is not used in connection with the non-criminal person of unsound mind, for the care and control of whom provision has been made by the legislature. See LUNATIC; LUNACY.

Insidiatores viarum. The words "*insidiatores viarum et depopulatores agrorum*" (waylayers and devastators of the country) having come to be used in indictments in order to prevent persons convicted thereon from having benefit of clergy, the statute 4 Hen. 4, c. 2, enacted that such or similar words should not be used and that, if used, they should be without effect.

Insimul computasset. A writ or action of account which was formerly in use.

Insimul tenuit. One of the writs of formedon (q.v.).

Insinuation. In the practice of the prerogative Courts (q.v.) the "insinuation" of a will was the lodging of it with the registrar in order to obtain probate thereof.

Insolvent; Insolvency. A person is said to be insolvent when he is unable to pay all his debts in full; insolvency is the condition of such a person. Generally it results in bankruptcy or arrangement proceedings, or if the person dies before they are taken, his estate may be administered in an action in the Chancery Division.

Formerly when none but traders were included in the bankruptcy law, occasional Acts of Parliament, called Acts of Insolvency, or Insolvent Acts, were frequently passed, "whereby," as Blackstone puts it, "all persons whatsoever, who are either in too low a way of dealing to become bankrupts, or not being in a mercantile state of life are not included within the laws of bankruptcy, are discharged from all suits and imprisonments, upon delivering up all their estate and effects to their creditors upon oath, at the sessions or assizes." Subsequently various statutes were passed, providing for the discharge of persons imprisoned for debts, on their making a *cessio bonorum* for the benefit of their creditors, and by the Act 53 Geo. 3, c. 102, and subsequent Acts, the principle was made into a system, administered by a Court of record called the Court for the Relief of Insolvent Debtors. The first step was a petition by the prisoner for his discharge, or a petition by a creditor for the administration of the debtor's property; in either case a vesting order was made, by which all the debtor's property was vested in one or more assignees (see ASSIGNEE), and in due time the prisoner obtained his discharge. (See PROTECTION.) The Court for the Relief of Insolvent Debtors was abolished and its jurisdiction transferred to the Court of Bankruptcy by the Bankruptcy Act, 1861, which made non-traders subject to the bankruptcy law. See BANKRUPTCY.

In the case of a company, insolvency generally leads to winding up (q.v.).

Inspection. Inspection of documents. When a party to an action, or other proceeding in the High Court, has by his pleadings or by an affidavit of documents admitted that he has in his possession any documents relating to the matters in question between the parties, any other party to the proceeding may give him notice to produce them for inspection (Ord. 31, r. 15). If he fails to comply with the notice, the party requiring production may apply to the judge for an order for inspection (*ib.*, r. 18). See AFFIDAVIT; CONFIDENTIAL COMMUNICATIONS; DISCOVERY; PRIVILEGE; SEALING UP.

Where the application is for the inspection of business books, the judge may, in the first instance, order that verified copies thereof be furnished to the applicant (*ib.*, r. 19A (1)). As to inspection of documents in the County Court, see County Court Rules, Ord. 16, rr. 13-17.

Inspection of property. The High Court may make an order for the detention, preservation, or inspection of any property being the subject of an action, and for that purpose may authorise any person to enter on or into any land or building. (Ord. 50, r. 3; and see TRIAL; VIEW.) Ord. 12, r. 3 of the County Court Rules is to the like effect.

As to the inspection of mines, see BOUNDARIES; BOUNDS.

Inspector. When the members of a partnership have been adjudicated bankrupt, although the separate creditors of each partner have no voice in the choice of a trustee under the joint adjudication, still they could formerly apply to the Court for the appointment of an inspector to protect their interests, *e.g.*, by getting in the separate effects, inspecting books and papers relating to the separate estates, etc. (See JOINT; SEPARATE.) And now (see Bankruptcy Rules, 1915, r. 294) each set of separate creditors may appoint its own committee of inspection (q.v.).

Inspector-General of the Forces. This officer came into existence in 1904. His function is to perform the executive duties of inspection which in theory had up to then been performed

by the Commander-in-Chief (q.v.), and to report to the Army Council (q.v.) upon the efficiency of the Army. Subordinate to him are various inspectors of the various branches of the service. He has no voice as to policy. He is also President of the Selection Board which recommends as to appointments and as to promotions to positions higher than that of captain. The office is now vacant or in abeyance.

Inspectors; Inspectorship Deeds. See LETTER OF LICENCE.

Inspeximus is the name given in the old books to an exemplification of letters patent or other record, because it begins with a recital in the name of the Crown that "We have inspected the enrolment of certain letters patent," and then sets it out verbatim. A Constat was a somewhat similar kind of exemplification, beginning with the words "Constat nobis," but was only granted where the party made affidavit that the original was lost. An *innotescimus* or *vidimus* was a copy of a charter of feoffment or other instrument not of record granted by the Crown. See EXEMPLIFICATION.

Instalments. Any County Court judgment for not more than £20 exclusive of the costs is, together with the costs, to be paid by instalments if the Court so orders, and any such judgment of whatever amount is also so payable if the plaintiff so consents (County Courts Act, 1888, s. 105). If default be made in payment of the instalments, the whole amount becomes payable (*ib.*, s. 149), but default does not *ipso facto* involve committal (q.v.): committal for nonpayment of a judgment debt, irrespective of amount, can be obtained only by proceedings under s. 5 of the Debtors Act, 1869.

See further, s. 153 of the County Courts Act, 1888 and the County Court Rules, Ord. 23, rr. 11, 12, 14, 15 (2).

Instance Court. The Admiralty Court (see ADMIRAL), was, as regards its jurisdiction otherwise than in prize (see CAPTURE), known as an Instance Court. The same judge exercised both jurisdictions, but under different commissions.

Instans est finis unius temporis et principium alterius (*Co. Litt.* 185). (An instant is the end of one period of time, and the beginning of another.) It consequently has no length.

In statu quo. See STATUS QUO.

Instaurum. This was anciently used as meaning, in the narrower sense, the stock of cattle on a farm; or in a wider sense, as meaning (Fleta, *lib.* 2, c. 27), the cattle and all implements of husbandry on the farm. In another sense it meant the vestments, books, altar plate, etc., of a church.

In stipulationibus cum quæritur quid actum sit verba contra stipulatorem interpretanda sunt (*D.* 45, 1, 38). (In the construction of contracts words are interpreted against the person using them.) This is a maxim of the civil law setting out the rule under which, in a case of doubt, the construction of the *stipulatio* was against the *stipulator*.

Institutes. See COKE; CORPUS JURIS CIVILIS.

Institution, in ecclesiastical law, is the ceremony by which the bishop of a diocese, when a clerk has been presented to him, commits to his charge the care of the souls of the parish: it is a kind of investiture of the spiritual part of the benefice. The bishop could formerly refuse to institute only if the clerk were under twenty-four or not in priest's orders, or because of facts connected with him which would be ground for deprivation. Now the bishop can refuse to institute for any of the reasons specified in s. 2 of the Benefices Act, 1898.

See ADMISSION; COLLATION; INDUCTION; PRESENTATION.

Instroke. See OUTSTROKE.

Instrument. An instrument is a writing, and generally means a writing of a formal nature. But where there is a power to appoint by "any deed or instrument or by will," any writing, such as a letter, which refers to the power, or which can have effect only by operating on the fund (such as a cheque or other order for payment) is an instrument. A telegram is an instrument within the meaning of the Forgery Act, 1913, s. 7 (replacing the Forgery Act, 1861, s. 38) and so also is an envelope with a postmark falsified for the purposes of a betting fraud; the term is, in fact, very comprehensive.

Instrument of Appeal was the document by which, down to 1881, an appeal was brought in a matrimonial cause from the President of the Probate, Divorce and Admiralty Division to the full Court established by the Matrimonial Causes Act, 1857 (see ss. 8, 55). It was analogous to a petition. The Judicature Act, 1881, s. 9, substituted the Court of Appeal for the full Court; and the "instrument of appeal" is not used in appeals to the Court of Appeal.

Insufficient. When a person is required to make an answer or affidavit, and makes one which does not in form comply with the requirement, it is said to be insufficient. The

word is used in connection with affidavits of documents and answers to interrogatories. Insufficiency differs from incompleteness, for a party may make an affidavit of documents which is in form sufficient and is nevertheless incomplete by the omission of documents which ought to have been included, and *vice versâ*.

Where an affidavit is insufficient, the opposite party may obtain an order requiring the deponent to make a further one (Ord. 31, r. 11).

Insuper. To "set *insuper*" in revenue accounts means to charge or debit a sum of money. See the Taxes Management Act, 1880, s. 112.

In the statute 21 Jac. 1, c. 2, s. 8, the word is used as part of the expression to "*stand insuper*," that is to say, to be carried forward as an unsettled debt.

Insurance is an agreement between two persons (the insurer and the assured) that in consideration of a comparatively small payment (called the premium) by the assured, the insurer will, on a certain event happening during a given time, pay to the assured either an agreed sum or the amount of the loss caused to the assured by the event. (See INTEREST.) The amount of the premium is calculated with reference to the risk incurred by the insurer. (See RISK.) The instrument by which the contract is entered into is called a policy (q.v.). Insurance is a contract *uberrimæ fidei* (q.v.).

Contracts of insurance are of two kinds, viz., those which are, and those which are not, in the nature of contracts of indemnity.

I. To the first class belong fire and marine (or maritime) insurances. By a fire insurance the insurer, in consideration of a certain premium, paid either in gross (*i.e.*, once for all) or at stated intervals, undertakes to indemnify the assured against damage to his property by fire during a limited portion of time. Fire insurances are sometimes divided into "common," "hazardous," "double hazardous," and insurances of "extraordinary risk," according to the nature of the property insured and the purposes for which it is used. Marine insurance is a contract of indemnity against certain perils or sea risks to which the ship, freight or cargo, and the interests connected therewith, may be exposed during a particular voyage, or a fixed period of time. The insurer in marine insurances is usually either an underwriter (q.v.) or an insurance company. As to the varieties of marine insurances, see POLICY OF ASSURANCE. See also LLOYDS.

Insurances of this class being contracts of indemnity, the assured is only entitled to be paid once, and if he obtains payment of his loss from any other source, he is not entitled to claim against his insurer. Moreover, the insurer, upon paying the loss, is entitled to be put in the place of the assured; therefore if the assured had a claim which he might have enforced in respect of the property (*e.g.*, against a person whose negligence or wrongful act caused the loss), the insurer will thenceforth be entitled to enforce that claim for his own benefit; or if after the insurer paid the assured's claim, the latter receives compensation from other sources, the insurer is entitled to recover from the assured any sum which he may have received in excess of his actual loss. See SUBROGATION.

Double insurance takes place when the same interest and the same risk are insured twice; a second insurance being often necessary where the precise value of the interest is not at first known. But if it appears, when the value of the interest becomes known, that there has been an over-insurance, that is to say, that the sum of the two or more insurances exceeds the interest of the assured, the excess cannot be recovered. And if the same persons insures the same property with two insurers, and it turns out that there has been an over-insurance, then the insurers are entitled to make one another contributor rateably, so that they may all bear the loss in proportion to the amounts for which they have respectively insured the property, instead of the loss being thrown on one.

In addition to fire and marine insurances there are several varieties of insurance belonging to the same class, whose names explain themselves, such as plate-glass and cattle insurance (see CATTLE INSURANCE SOCIETIES), insurance against damage by hail, and burglary insurance.

The law as to marine assurance is codified by the Marine Assurance Act, 1906. See LOST OR NOT LOST. See also P.P.I.; SUING AND LABOURING CLAUSE; ID QUOD COMMUNE EST, ETC.

II. To the second class belong life and accident insurances.

Insurance upon a life is a contract by which the insurer, in consideration of a certain premium, either in a gross sum or by annual payments, undertakes to pay to the person for whose benefit the insurance is made, a certain sum of money or annuity on the death of the person whose life is insured; the latter is sometimes called the *cestui que vie* or "the

life." If the insurance be for the whole life, the insurer undertakes to make the payment whenever the death happens; if otherwise, he undertakes to make it in case the death should happen within a certain period, for which period the insurance is said to be made. The utility of this contract is obvious. A creditor is enabled thereby to secure his debt; an annuitant, the continuance of his income after the grantor's decease; a father, a provision for his family, available in case of his own death. Policies may also form the subject of settlements and mortgages.

An accident insurance is a contract to pay a fixed sum on death resulting from accident, either generally, or limited to accidents of a particular kind, *e.g.*, railway accidents. Some policies also provide for payment of a fixed weekly sum during incapacity caused by an accidental injury.

As to insurable interest, see INTEREST.

The law as to insurances, other than insurance against loss by maritime perils, is consolidated and amended by the Assurance Companies Act, 1909.

See RISK; REINSURANCE; SALVAGE; SUING AND LABOURING; WARRANTY; UBERRIMÆ FIDEI; NATIONAL INSURANCE; ASSURANCE.

Insurance Commissioners; Welsh Insurance Commissioners. The Insurance Commissioners were appointed under s. 57 of the National Insurance Act, 1911, to administer that Act in England: the Welsh Insurance Commissioners were appointed under s. 82 to administer the Act in Wales. The powers and duties of both bodies were transferred to the Minister of Health (q.v.) in 1919.

Insurance Committee. For the purposes of the National Insurance Act, 1911, this means a committee constituted for every county and county borough under s. 59 of that Act. It must consist of not less than forty or more than eighty persons, three-fifths of whom represent the insured persons of the area for which it acts; one-fifth is elected by the county or borough council; and the remaining fifth is made up of medical practitioners and nominees of the Insurance Commissioners (q.v.), or now the Ministry of Health.

Intaker. In the North of England this anciently meant a receiver of stolen cattle: see the statute 9 Hen. 5, st. 1, c. 7.

In-takes are temporary inclosures made by customary tenants of a manor under a special custom authorising them to inclose part of the waste until one or more crops have been raised on it.

Intendment. "Intendment of the law," in the old books, signifies a presumption, and "common intendment" signifies a rule of law or *præsumptio juris et de jure*. See PRESUMPTION.

Intentio cæca mala (2 *Bulst.* 179). (A hidden intention is bad): see 5 *Rep.* 68, where it was decided that effect could not be given to a will containing a latent ambiguity for the explanation of which no evidence was forthcoming.

Intentio inservire debet legibus, non leges intentioni (*Co. Litt.* 314). (Intention ought to be subservient to the laws; not the laws to intention.) Where Coke quotes this maxim it really means that when anyone does an act it must have the effect which the law attributes to the act rather than the effect which it is intended to have.

Intention. In civil or private law, the general rule is that a person is responsible for the consequences of his acts, whether he intended them or not. Hence if A. in defending himself against B. unintentionally strikes C., he is liable to an action of battery by C. (See BATTERY). In such actions, however, the question of intention is generally taken into consideration by the jury in assessing the damages (see DAMAGES). As to actions of libel, see APOLOGY.

In criminal law, intention is an essential part of every crime or offence. But see IN CRIMINALIBUS SUFFICI, ETC.

See DELUSIONS; DURESS; FRAUD; INSANITY; LUNACY; MALICE; MENS REA; NEGLIGENCE; OVERT ACT; REMOTE; UNDUE INFLUENCE.

Intentione. After the death of a tenant in dower or for life, this writ lay anciently for the remainderman or reversioner against one who had entered on the lands.

Inter arma leges silent. (In war the laws remain silent); that is to say, when a state of war exists the civil law is superseded to such extent as may be necessary.

Inter canem et lupum. Literally, between the dog and the wolf. It actually meant during twilight: see Plac. Trin. 7 Edw. 1.

Intercommon. See COMMON.

Interesse termini ("interest of a term") is the interest which a lessee under a lease at common law has before he enters or takes possession of the land demised. But a term limited to commence immediately by a bargain and sale or other conveyance operating under the Statute of Uses passes an estate without the necessity of entry.

An *interesse termini* is merely the right to an estate, and therefore can neither prevent nor be the subject of merger.

Interest.—I. In the most general sense of the word, a person is said to have an interest in a thing when he has rights, advantages, duties, liabilities, losses or the like, connected with it, whether present or future, ascertained or potential: provided that the connection, and in the case of potential rights and duties, the possibility, is not too remote. The question of remoteness depends upon the purpose which the interest is to serve.

Interest also signifies, more especially, an advantageous or beneficial interest: thus declarations by deceased persons against their own pecuniary or proprietary interest are receivable in evidence in proceedings between third persons, by exception to the general rule against hearsay evidence.

Interests may be considered from the following aspects:—

Interest as applied to property is used in a wide sense to include estates (legal and equitable), charges, easements, profits *à prendre* licences, equities of redemption, and generally every right in respect of property which entitles or may in future entitle the holder to make use of it in some way, as opposed to bare powers, uses, authorities, possibilities, expectations, rights of presentation and the like. Hence "interest" is used in conveyances, etc., to denote every beneficial right in the property conveyed. In a narrower sense, interest is used as opposed to estate, and therefore denotes rights in property not being estates; *e.g.*, an *interesse termini* (q.v.): the *quasi*-reversion of a lord which entitles him to the land on an escheat or forfeiture: the interest which the lord of a manor has in copyhold land between a surrender by the old tenant and the admittance of the new: the interest of executors under a devise of land for the payment of debts: interests resembling estates but not recognised as such by the common law, *e.g.*, executory interests in land (see EXECUTORY INTEREST); and those interests in personalty which closely resemble estates properly so called. The terms "absolute," "limited," "vested," "contingent," "sole," "joint," etc. are applied to interests in the same senses in which they are applied to estates. See ESTATE; TENANT.

"Interest" is used by real property lawyers in several technical senses; thus at one time it may denote certain rights intimately connected with the soil of land, such as commons and other profits *à prendre*, licences for profit certain, etc., as opposed to "matters of easement and discharge," such as a right of way or a mere authority to enter upon land; while in another sense "interest" is used to denote an exclusive right to land, namely, that arising from ownership, as opposed to rights *in alieno solo*, such as commons. "Interest" is also opposed to "possession," as when we say that an estate is vested in interest, meaning that the right has accrued, but that the possession is deferred; thus a vested remainder is an estate vested in interest. See ESTATE.

In the law of insurance a person is considered to be interested in property or in the life of a person, when the destruction or injury of the property, or the death of the person, would expose him to pecuniary loss; this is an "insurable interest." Thus a creditor has an insurable interest in the life of his debtor, because if the debtor died his money might be lost; and a shipowner has an insurable interest in the goods on board his ship to the extent of his freight, because if the goods were lost the freight would not be paid; *à fortiori* of course the owner of the goods has an insurable interest in them. When a person insures for an amount exceeding the value of his interest (as where part only of an insured cargo is put on board) the excess is called short interest, and part of the premium proportionate to the excess is returnable by the underwriter. (See RISK.) A policy of insurance is void if it be on any event, other than a maritime loss (Life Assurance Act, 1774, s. 1), or against loss by maritime perils (Marine Insurance Act, 1906, s. 4), when effected by a person having no insurable interest in the life, house, or ship, etc.; and (Marine Insurance (Gambling Policies) Act, 1909) any person without insurable interest who insures against loss by maritime perils is guilty of an offence punishable upon summary conviction. See P.P.I.

It is a rule of equity that a person cannot maintain a suit or action unless he has an "interest" in the subject of it, that is to say, unless he stands in a sufficiently close relation to it as to give him a right which requires protection or has been infringed, and for the protection or infringement of which he brings the action; and "want of interest" is a ground for a motion to strike out under Ord. 23, r. 4; thus, if a testator bequeaths property in trust for his daughters and their issue, and on their death without issue, in trust for his next of kin, during the daughters' lives the next of kin have only an expectation and not an interest, and cannot maintain an action for the administration of the estate.

So in the law of probate and administra-

tion, a person has an interest, for the purpose of obtaining a grant of probate, when he is the executor of the deceased, and, for the purpose of obtaining a grant of letters of administration, when he is a relation, legatee, or creditor of the deceased; for the purpose of opposing a grant of probate or administration any person has an interest whose rights will or may be affected by the proposed grant. When a person has such an interest as to entitle him to a grant in priority to another person, the former is said to have a superior, the latter an inferior interest. An interest action (or cause) is one in which the legal interest of a person in the estate of the deceased is disputed; thus, where a person applying for a grant of probate or administration is stopped by a caveat, he issues a writ of summons against the caveator to have the question whether he is entitled to the grant determined, and (Ord. 20, r. 9) he must allege in his statement of claim that he denies the interest of the caveator.

One person may have an interest in another independently of the question of property. Thus a husband has an interest in his wife (see CONSORTIUM), a guardian in his ward, a master in his servant, and so on. (See RIGHT.) The interest which a guardian in socage had in his ward has been called an interest of honour, as opposed to an interest of profit. Similarly the interest which an executor has in the property vested in him is sometimes called an interest of office. See RIGHT; ESTATE; POSSIBILITY; POSSESSION; ESTOPPEL.

II. Interest also signifies a sum payable in respect of the use of another sum of money, called the principal. Interest is calculated at a rate proportionate to the amount of the principal and to the time during which the non-payment continues; this rate is generally expressed as so much for every hundred pounds (" per centum ") during a year (" per annum "). Thus a contract to pay five per cent. per annum on £1,500 entitles the lender to £75 for every year, £6 5s. for every month, and so on while the loan continues. Interest is considered as accruing from day to day (see APPORTIONMENT), although it is generally payable periodically, *e.g.*, at half-yearly intervals.

Interest is of two kinds, namely, that which is agreed to be paid on a loan, and that payable as damages for the non-payment of a debt or other sum of money on the proper day. Formerly the common law only allowed interest by way of damages where the debt was secured by a bill of exchange, or where a promise to pay interest was implied from a usage of trade or the like. But by the Civil Procedure Act, 1833, s. 28, interest is recoverable on all debts payable by virtue of any written instrument. If no time of payment is fixed, the creditor must give the debtor notice before he can become entitled to claim interest. In equity, interest seems to be allowed as damages in all cases where there has been a wrongful detention of money which ought to have been paid; and in any such case the remedy is to obtain an order for an account with rests (q.v.). A judgment debt bears interest at four per cent. from the date on which the judgment is entered until it is paid (Judgments Act, 1838, s. 17), unless it had been agreed between the parties (as is commonly done in mortgages) that a higher rate should be paid on any judgment which might be recovered (Ord. 42, r. 16). If a person contracted to pay £100 on the 1st January, 1877, with interest at five per cent. per annum in the meantime, and he failed to repay the £100 on the day, the same rate of interest would generally be adopted by a Court or jury as the measure of damages for the delay in payment. If, however, the agreed rate were excessive and extraordinary, such as five per cent. per month, it would not be adopted, and only a reasonable rate, say four or five per cent. per annum, would be allowed as damages. See PENALTY.

Interest is also either simple or compound. Compound interest is where each periodical amount of interest as it becomes payable is added to the principal, so that the next instalment of interest is calculated not only on the principal but also on the interest already accrued.

In the case of loans made on the security of bottomry bonds, etc., the lender, in consideration of the risk incurred, has always been allowed to stipulate for an extraordinary rate of interest, called maritime interest, even when this was an exception from the laws against usury, and this still applies in foreign countries (see USURY); but the Courts can always reduce the interest when manifestly too high; and see now the Moneylenders Act, 1900.

" Interest," in Latin means (1) " it concerns," (2) " it concerns beneficially," " is of advantage " (*Dig.* ii. 11, fr. 14; x. 4, fr. 19); hence its primary meaning of " right." The word came to mean the payment made for a loan thus—In Roman law when a person brought an action against his debtor for non-

payment of a sum of money he claimed, in addition to the debt, *id quod interest creditoris solutum esse*, that is, the benefit which he lost by the non-payment (Dig. xix. 1, fr. 1), and this was computed by calculating what profit he could have made by lending the money with a stipulation for the payment of a perdiodical sum for the use of it (*usuræ*, *fœnus*). Thus the damages for the wrongful detention of money (*interest*, *interesse*) became equivalent to the agreed payment for a loan (*usuræ*, *fœnus*). The word "interest" seems to have been introduced into England as a substitute for "usury" (q.v.) when that word had acquired a sinister meaning.

Interest, Disqualification for. Any direct interest in the subject-matter of legal proceeding disqualifies anyone for acting in a judicial capacity and will invalidate the proceedings if such person so acts, unless such interest is announced to or known by the parties and they waive the right to object. That is the general principle; but it is subject to statutory variation. Thus in licensing cases (see the Licensing Consolidation Act, 1910, s. 40) persons financially interested in the trade are disqualified from adjudicating, and incur penalties if they adjudicate, but the proceedings are not invalidated merely by reason of the fact that they have adjudicated. On the other hand, a judge (see the Jurisdiction in Rating Act, 1877, is not disqualified from adjudicating in a rating case merely because he will have to pay the rate in question. See also BIAS.

Various Acts relating to local government provide that persons interested in contracts with the bodies elected under those Acts are disqualified from being elected to or acting on such bodies.

Interested Witness. Before the enactment of the Evidence Act, 1843, no person was a competent witness in any legal proceedings in the result of which he was financially interested. That statute removed this disqualification: but parties to the proceedings remained disqualified until the enactment of the Evidence Act, 1851.

Interest reipublicæ ne maleficia remaneant impunita (*Jenk. Cent.* 31; *Wing. Max.* 140). (It is a matter of public concern that wrong doings are not left unpunished.)

Interest reipublicæ ne suâ re quis male utatur (6 *Rep.* 37). (It concerns the State that no one should make a wrongful use of his property.) This maxim is cited in support of the proposition that a lessee cannot commit waste and destruction.

Interest reipublicæ quod homines conserventur (12 *Co.* 62). (It concerns the State that men be preserved.) Cited by the Court in a case where part of the cargo of a ferry boat had been thrown overboard in order to prevent her from sinking and drowning the passengers.

Interest reipublicæ res judicatas non rescindi (2 *Inst.* 360). (It concerns the State that judgments be not rescinded.) Coke cites, along with this maxim, the maxim *Judicia in, etc.* (q.v.), which contains the necessary qualification.

Interest reipublicæ suprema hominum testamenta rata haberi (*Co. Litt.* 236). (It concerns the State that men's last wills should be deemed valid.) That is to say, effect is given to the intentions of a testator in so far as the law permits.

Interest reipublicæ ut sit finis litium (*Co. Litt.* 303). (It concerns the State that lawsuits be not protracted.) The law does not encourage litigation. See NEMO DEBET BIS, ETC. and LIMITATION.

Interim Order. An order as to the meantime; an order which is of effect for a limited period. Thus, under Ord. 50, r. 1, the Court may make an order for the preservation or interim custody of the subject-matter of

Interim Period. See DENTISTS.

Interlineation. See ALTERATION.

Interlocutory. A proceeding in an action is said to be interlocutory when it is incidental to the principal object of the action, namely, the judgment. Thus, interlocutory applications in an action include all steps taken for the purpose of assisting either party in the prosecution of his case, whether before or after final judgment; or of protecting or otherwise dealing with the subject-matter of the action before the rights of the parties are finally determined; or of executing the judgment when obtained. Such are applications for time to take a step (*e.g.*, to deliver a pleading), for discovery, for an interim injunction, for the appointment of a receiver, for obtaining a garnishee order, etc. So an order giving a plaintiff leave to sign judgment is interlocutory, because he must sign judgment before he can issue execution. The question whether an order is interlocutory is of importance with reference to the time during which it may be appealed against, three weeks being allowed for appeals from interlocutory orders, and (unless the time is enlarged when an order is made or unless the Court of Appeal enlarges the time subsequently) six weeks for all other appeals (Ord. 58, r. 15).

As to interlocutory judgment, see JUDGMENT; DECREE; as to interlocutory injunctions see INJUNCTION.

International Copyright. See COPYRIGHT.

International Law is of two kinds, public and private.

Public international law is the body of rules which control the conduct of independent States in their relations with each other. It is therefore altogether different in its nature from law in the narrower sense of the word, namely, law capable of judicial enforcement, for that implies a force superior to both the litigants or disputants; and as independent States have no recognised common superior, the rules by which their conduct is governed are incapable of enforcement except by war.

With reference to its sources, public international law is sometimes divided into natural and positive,—the natural consisting of those rules which are (or are supposed to be) derived from the law of nature, and the positive consisting of rules based on usage or custom (customary international law), and on agreement (conventional international law).

See BLOCKADE; CONFISCATION; CONTRABAND; DROIT D'ANGARIE; EMBARGO; MUNICIPAL; POSTLIMINIUM; PRE-EMPTION; PRIVATEERS; PRIZE COURTS; REPRISALS; RETORSION; SEARCH; TERRITORIAL.

Private international law is that branch of municipal law which determines before the Courts of what nation a particular action or suit should be brought, and by the law of what nation it should be determined; in other words, it regulates private rights as dependent on a diversity of municipal laws and jurisdictions applicable to the persons, facts, or things in dispute, and the subject of it is hence sometimes called "The Conflict of Laws."

Thus, questions whether a given person owes allegiance to a particular State where he is domiciled, whether his status, property, rights and duties are governed by the *lex situs*, the *lex loci*, the *lex fori*, or the *lex domicilii* (see those titles), are questions with which private international law has to deal.

Interpleader. When a person is in possession of property in which he claims no interest, but to which two or more other persons lay claim, and he, not knowing to whom he may safely give it up, is sued by one or both, he can compel them to interplead, *i.e.*, to take proceedings between themselves to determine who is entitled to it. Thus, where a seller of goods attempts to stop them *in transitu*, and the buyer or his assignees contend that he has no right to do so, the wharfinger in whose hands the goods are is liable to an action by each for their delivery. Before the now repealed statute 1 Will. 4, c. 58, popularly known as the Interpleader Act, he must either have defended both actions, or filed a bill in equity (called a bill of interpleader) to compel them to interplead, but under that Act (as extended by the Common Law Procedure Act, 1860), as soon as either of them commenced an action against him, he might apply to the Court or a judge, and if there was really a question between the claimants, an order would be made directing it to be tried either by substituting the second claimant as defendant to the action in lieu of the stakeholder, or by a feigned issue or by a special case. In some cases the question might be disposed of summarily.

The Interpleader Act also contained provisions for the relief of sheriffs against conflicting claims to goods taken in execution.

The Statute Law Revision and Civil Procedure Act, 1883, repealed the Interpleader Act and all the sections, except s. 17, of the Act of 1860 which dealt with interpleader; and these repealed enactments are now replaced by R.S.C. Ord. 57, which, together with s. 17 of the Act of 1860, contains without substantial alteration the law as it had existed before 1883. The feigned issue is, however, of course, gone.

Bankruptcy Courts (q.v.) can make interpleader orders under the Bankruptcy Act, 1914, s. 105.

Interpleader in the County Court by the high bailiff and by others is regulated by s. 157 of the County Courts Act, 1888, and by Order 27 of the County Court Rules.

In the Mayor's Court (see now MAYORS AND CITY OF LONDON COURT) interpleader by the serjeant-at-mace—corresponding to the sheriff in the High Court or the high bailiff in the County Court—is under the Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. clvii.), ss. 32-35; and interpleader by others is still regulated by ss. 12-18 of the Common Law Procedure Act, 1860, inasmuch as these sections were made applicable to this Court by an Order in Council of 1879 and still remain applicable to it by virtue of s. 7 of the Statute Law Revision and Civil Procedure Act, 1883, notwithstanding the fact that they, except s. 17, were repealed by the last-mentioned Act.

See PROPRIETATE PROBANDA.

Interpretare et concordare leges legibus est optimus interpretandi modus (8 *Rep.* 169). (To interpret and to reconcile the laws to laws is the best mode of interpretation.) That is

to say, the best interpretation of the laws is that which makes them agree with one another.

Interpretatio chartarum benigne facienda est ut res magis valeat quam pereat. (The construction of deeds is to be made liberally, that the thing may rather avail than perish.) This is another form of BENIGNÆ FACIENDÆ, ETC., and of INTERPRETATIO FIENDA, ETC. (q.v.).

Interpretatio fienda est ut res magis valeat quam pereat (*Jenk. Cent.* 198). (A document should [where the law permits] be interpreted so that its intention is carried out and not defeated.) Compare BENIGNÆ FACIENDÆ, ETC.

Interpretation Act, 1889. This is the statute 52 & 53 Vict. c. 63. Its full title is "An act for consolidating enactments relating to the construction of Acts of Parliament and for further shortening the language of Acts of Parliament." It repealed all previous Acts on the subject; and it has certainly shortened Acts of Parliament by making it possible to use only a single word when, apart from enactment, very many words would be required. See, for instance, GOVERNORS.

Interpretation Section; Interpretation Clause. In every modern Act of Parliament which is of any length there is a section setting out the meanings which are to be attached to particular words when used in the statute. Thus, the Firearms Act, 1920, s. 12 (see FIREARMS) defines "firearm" and "ammunition" for the purposes of that Act. Such a section is known as the "interpretation section"; and such sections supplement for each particular Act the function performed for Acts in general by the Interpretation Act, 1889.

In deeds a clause setting out the meaning which is to be attached to a particular expression is known as the interpretation clause. Thus, when A and B are trustees of a settlement their names are inserted once only in the instrument creating the trust and after their names is added the words "(hereinafter called the trustees which expression as hereinafter used shall whenever the context so requires or admits include the trustees or trustee for the time being hereof)" or other words to the like effect.

Interrogatories are written questions to be answered on oath. Sometimes the answers are given verbally and taken down in writing, as when a person is examined by interrogatories before an examiner or commissioner, under R.S.C. Ord. 37, r. 1, but more generally the term is used to denote interrogatories delivered, under Ord. 31, by one party to an action for the examination of the opposite party, who is compellable to answer them by affidavit. By this means a plaintiff is enabled in many cases to ascertain whether he has a good cause of action, or obtain admissions in support of his case. See ANSWER; DISCOVERY.

The practice of administering interrogatories is derived from the old practice in Chancery.

As to interrogatories in the County Court, see County Court Rules, Ord. 16, rr. 1-9.

In terrorem. Where there is in a will a gift of personalty to A on condition that he does or does not marry a particular person or that he does not contest the will, but there is no gift over in the event of his failing to comply with the condition, the condition is void and is said to be *in terrorem*, that is to say, it is a mere futile attempt to frighten the donee. Any such condition will, however, be effectual if there is a gift over. See CONDITION; RESTRAINT OF MARRIAGE.

Interruptio multiplex non tollit præscriptionem semel obtentam (2 *Inst.* 654). (Frequent interruption does not take away a prescription once acquired.) This is merely a marginal note in Coke. See INTERRUPTION.

Interruption. In the law relating to easements, *profits à prendre*, franchises and similar rights, interruption is where the continuity of enjoyment of a right is broken. Interruption of the possession is where the right is not enjoyed or exercised continuously; interruption in the right is where the person having or claiming the right ceases the exercise of it in such a manner as to show that he does not claim to be entitled to exercise it. Thus if a person who has for some time used a right of way simply ceases to use it, this is an interruption to the possession; if he asks the permission of the owner of the land before continuing to use the right, this is an interruption in the right, even if he then makes use of the way, because he does so not in exercise of his original right, but by virtue of the permission granted to him by the owner.

Interruption in the right may arise either from the act of the person having or claiming the right, or from the act of the servient owner, or other person, as where an adverse obstruction is erected to prevent the exercise of the right.

Interruption of the possession has no legal effect except as evidence of an interruption in the right. Interruption in the right may prevent the acquisition of a right by prescription, or may cause the acquisition of a qualified right, or may destroy a right which has been acquired. By the Prescription Act, 1832, s. 4,

it is provided that no act or other matter shall be deemed to be an interruption so as to prevent the acquisition of a right under the Act unless it shall have been submitted to or acquiesced in for one year after notice.

See ENJOYMENT; DISTURBANCE.

Intertiare. To put into the hands of a third person. In the Anglo-Saxon period when the owner of stolen property claimed it from one to whom it had been sold by the thief, it was usual to hand the property over to a third person pending the decision of the matter. See *Leg. Inæ*, co. 27, 52; and *Leg. Edw. Conf.* c. 25.

Compare IN CUSTODIA LEGIS; INTERIM ORDER.

Intervene; Intervener. An intervener is a person who voluntarily interposes in an action or other proceeding in the Probate, Divorce and Admiralty Division with the leave of the Court. Therefore a person who is cited (q.v.) is not an intervener, although sometimes so called.

In divorce practice any person can intervene in a suit for nullity or dissolution by showing cause against a decree *nisi* (see DECREE); and at any time during the progress of such a suit and before the decree is made absolute, if the King's Proctor suspects that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, he may by leave of the Court intervene in the suit, alleging the collusion, and retain counsel and subpœna witnesses to prove it (Matrimonial Causes Act, 1860, s. 7, Matrimonial Causes Act, 1873, s. 1, and see COLLUSION).

In probate actions (R. S. C. Ord. 12, r. 23) and in admiralty actions *in rem* (*ib.* r. 24) any person may intervene who can show that he has an interest in the matter in dispute.

The term "intervene" is sometimes applied to those cases where a person may, by leave of the Court, make himself a defendant in an action by entering an appearance: as (under Ord. 12, r. 25) in an action for the recovery of land. See APPEARANCE.

In testamentis plenius testatoris intentionem scrutamur (3 *Bulst.* 103). (In the case of wills we bear the intention of the testator more fully in mind.) This is merely the version given by Dodderidge, J., of the maxim (*D.* 50, 17, 12) *In testamentis plenius voluntates testantium* (in the case of wills the wishes of those who made the wills are more fully interpreted.)

Intestate. In the strict sense of the word, a person is said to die intestate when he leaves no will: but he is also said to die intestate, wholly or partially, if he leaves a will which does not dispose of his property at all, or only disposes of part of it, so that the whole or a part of it devolves to his heir at law or next of kin according to the rules governing the devolution of intestates' estates: as to which see DESCENT; DISTRIBUTION.

Intimidation. Every person commits a misdemeanour, punishable with a fine of £20 or imprisonment for three months (maximum), who, in order to compel any other person to abstain from doing or to do any act which he has a legal right to do or to abstain from doing, wrongfully uses violence to, or intimidates, him, or his wife or children: see the Conspiracy and Protection of Property Act, 1875, s. 7. This enactment was chiefly directed against outrages by trade-unions (q.v.).

See COMBINATION.

In toto et pars continetur (*D.* 50, 17, 113). (The part is contained in the whole.) See IN MAJORE, ETC.; MAJUS CONTINET, ETC.

Intoxicating Liquor. "In this Act, unless the context otherwise requires, the expression 'intoxicating liquor' means spirits, wine, beer, porter, cider, perry and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without an excise licence" (Licensing (Consolidation) Act, 1910, s. 110).

See LICENCE (IV.).

In traditionibus scriptorum, non quod dictum est sed quod gestum est inspicitur (9 *Rep.* 137). (In the delivery of deeds, not what is said but what is done is regarded.) Quoted as the ground of a decision that actual delivery of a deed without the use of any words is a good delivery in law.

Intra vires. An act is said to be *intra vires* ("within the power") of a person or corporation when it is within the scope of his or its powers or authority. It is the opposite of *ultra vires* (q.v.).

Intrinsic Service; Servitium intrinsecum. See FORINSECUS.

Introduction. The introduction of a deed consists of the words with which it begins. In an indenture the introduction consists of the words "This Indenture," followed by the word "witnesseth" after the date and parties and the recitals (if any). In a deed poll containing recitals the introduction is "To all to whom these presents shall come, A B of, etc. sends greeting:" followed by the recitals; when a deed poll contains no recitals it begins with the words "Know all men by these

presents that I, A B, of, etc." See DEED; PREMISES.

Intruder; Intrusion. Intrusion, in the law of real property, occurs in the following cases:

Where a person (A) dies seised of an estate of inheritance expectant upon an estate for life, and then the tenant for life dies, and before the personal representative (formerly the heir) of A enters on the land, a stranger enters or "intrudes," then such personal representative has an action to recover possession of the land. The old remedy was the writ of entry on intrusion. That writ was abolished by the Real Property Limitation Act, 1833, s. 36. The present remedies are entry or an action for the recovery of the land.

"He that entreth upon any of the king's demesnes and taketh the profits," says Coke, "is said to intrude upon the king's possession." Similarly, if a tenant of Crown land continues in possession after his estate has determined, he is an intruder on the Crown, and not a tenant at sufferance (q.v.), "because," as Coke explains, "there is no laches imputed to the king for not entring." See INFORMATION.

Formerly when an heir in wardship of chivalry ousted his lord by entering on the land during his minority, or if, after attaining majority, he entered on the land without making satisfaction for his lord's right of marriage (q.v.), he was said to intrude into the land and the remedy of the lord was the writ of *intrusion de gard*.

In ecclesiastical law, intrusion is where a person without ecclesiastical authority takes possession of a benefice while it is full. Several ancient constitutions are directed against this offence.

Intrusion de gard. As to this writ, see INTRUDER.

Intrusione, De. The writ of intrusion, see INTRUDER.

Inutilis labor et sine fructus non est effectus legis (*Co. Litt.* 127*b*). (The law does nothing which is useless and fruitless.) Compare LEX NIL FRUSTRA, ETC.

Invadiare. To pledge or mortgage [land].

Invadiatus. In the twelfth and thirteenth centuries this was used as meaning one who had given surety for his appearance to answer a pending charge.

Invasio. In the Inquisition of Serjeanties and Knights Fees, which was held in 1212, the titles of some of the claimants were termed *invasiones super Regem*, that is to say, infringements of the king's rights.

Inventiones. Anciently used as meaning treasure-trove and sometimes also, it would seem, as meaning wreck or flotsam, etc.: thus in a charter of Edward I. he declared that the Barons of the Cinque Ports should have "*inventiones suas in mari et in terra*," that is to say "what they found in the sea and on the land."

Inventions. See PATENT; SPECIFICATION.

In verbis non verba sed res et ratio quærenda est (*Jenk. Cent.* 132). (In the interpretation of words one should look rather for the intention of him who used them and for the reason why he used them than for their literal meaning.)

Investiture, in feudal law, was the delivery of corporal possession of land granted by a lord to his tenant. It answered to the more modern livery of seisin (q.v.).

In ecclesiastical law, investiture is one of the formalities by which the election of a bishop is confirmed by the archbishop. As to lay investiture, see that title.

See DIGNITY.

Investment. The securities upon which trustees may invest trust funds are usually enumerated in the settlement or will creating the trust. Independently of such an express power they have a statutory power of investing in the securities specified in the Trustee Act, 1893, s. 1, as extended by the Colonial Stock Act, 1900, s. 2, the Metropolis Water Act, 1902, s. 17 (4), and the Housing (Additional Powers) Act, 1919, s. 9, unless and in so far as such investment is prohibited by the instrument which created the trust.

The securities in which cash under the control or subject to the order of the Supreme Court may be invested are specified in R. S. C. Ord. 22, r. 17. The investment of moneys paid into the County Court is governed by the County Court Acts, 1888, s. 71, as extended by the County Courts (Investment) Act, 1900, s. 1.

Invito beneficium non datur (*D.* 50, 17, 69). (A benefit is not conferred upon anyone against his consent.) This is a maxim of the Roman law. Compare OMNES LICENTIAM, ETC.

Ipso facto. By the mere fact. See EXCOMMUNICATION.

Irish Free State. See the Irish Free State (Constitution) Act, 1922 (Sess. 2).

Irishmen. Irishmen coming into England were required by the statute 2 Hen. 6, c. 8, to give security for their good behaviour: this enactment, which does not appear to have been enforced, was repealed in 1863.

Irrebuttable. See PRESUMPTION.

Irregular; Irregularity. When a proceeding

(judicial or extra-judicial) is done in the wrong manner, or without the proper formalities, it is said to be irregular or an irregularity—as opposed to a proceeding which is illegal or *ultra vires*. An irregularity may be waived by the consent or acquiescence of the opposite party or (in the case of judicial proceedings) will generally be allowed by the Court to be set right on payment of the costs occasioned by it (see, as to the Supreme Court, Ord. 70, and, as to the County Court, Ord. 54, r. 24, of the County Court Rules), while a proceeding which is illegal or *ultra vires* is, as a rule, wholly null and void.

Irremovability is the status of a pauper who cannot be legally removed from the parish or union in which he is receiving relief, notwithstanding that he has not acquired a settlement there; thus under the Poor Law Removal Act, 1846, s. 1, the Poor Law Removal Act, 1861, s. 1, and the Union Chargeability Act, 1865, s. 8, a pauper who has resided in a parish during the whole of the preceding year is irremovable. See POOR LAW; SETTLEMENT; REMOVAL; RESIDENCE.

Irrepleviable; Irreplevisable. See REPLEVIN.

Issuable in pleading signified anciently that which was put in issue by the pleadings, *e.g.*, "a matter of fact issuable," as Coke expresses it. More recently a pleading was said to be issuable when it raised a substantial question of fact or law, a judgment or verdict on which would determine the action on its merits. See ISSUE.

Issuable Terms meant Hilary and Trinity terms, because issues were then joined in the civil causes to be tried at the ensuing assizes. All the four terms were however, in fact, "issuable terms" (although not so called) for causes to be tried in London and Middlesex. See TERM.

Issue.—I. The issue of a person consists of his children, grandchildren, and all other lineal descendants. The word is, however, sometimes used by testators in the sense of "children." See HEIR.

II. "Issues" is the technical name for the profits of land taken in execution under a writ of distringas (q.v.).

III. When the parties to an action have answered one another's pleadings in such a manner that they have arrived at some material point or matter affirmed on one side and denied on the other, and the party whose turn it is to plead adds nothing to his previous pleadings, the parties are said to be "at issue"; the last pleading is called a joinder in issue (see JOINDER), and the question thus raised is called the issue, or one of the issues, in the action. Frequently issue is joined on one question in the case, and the pleadings continue as to the other questions; where the defendant sets up a counter-claim, issue is generally joined on the original claim before it is joined on the counter-claim.

If the pleadings do not succeed in sufficiently defining the issues in dispute between the parties, the judge may direct the parties to prepare issues, that is, to agree upon a written statement containing the questions between them, and, if they differ, the issues are settled by the judge (Ord. 33, r. 1).

The next step is the trial (q.v., and see ACTION).

As to the trial without pleadings of agreed issues, see FACT; and as to the trial of some issues before others, see Ord. 36, r. 7.

Under the old common law practice issues were either of fact or of law, the latter being where there was a joinder in demurrer. Demurrer (q.v.) has been abolished in civil proceedings, and the term "issue in law" is not used. (See QUESTIONS OF LAW.) A "general issue" was a peculiar kind of plea used in cases where the defendant wished to deny all the allegations in the declaration or the principal fact on which it was founded; thus, if an action was brought in respect of a contract or promise, the defendant might plead "that he did not promise as alleged" (see NEGATIVE PREGNANT), or to an action for a tort "that he is not guilty"; most of these general issues had short Latin or Norman names: *e.g.*, "*Non assumpsit.*" "Not guilty" (q.v.) is now the only general issue which can be pleaded. When issue in fact had been joined, all the proceedings in the action from the writ to the award of a jury were set out in a document called the issue, which was delivered by the plaintiff to the defendant, generally endorsed with notice of trial. In equity, joining issue was the mode of bringing on a suit for hearing on replication (q.v.) as opposed to motion for decree (q.v.).

In criminal procedure a prisoner is said to plead the general issue when he pleads "Not guilty" to the indictment. This is done when he intends either to deny or to justify the charge in the indictment; the general issue, therefore, includes defences in the nature of confession and avoidance (q.v. and see PLEA).

IV. A writ, subpœna, or similar document, is said to be issued when it is delivered by the proper officer of the Court to the party at whose instance it is sued out, after having

been sealed or otherwise marked to denote its official character.

See PRAECIPE; QUANTUM DAMNIFICATUS.

As used in pleading, the word "issue" occurs at the very commencement of the Year-Books, *viz.*, 1 Edw. 2. In some instances the expression *isser d'empler* occurs, which may be translated "to get out of," or "finish the pleading," and clearly marks the meaning and derivation of the word *issue*. In the reign of Edward IV. we find the Latin term thus regularly defined:—"*Exitus idem est quod finis, sive determinatio placiti.*"

Itinerant. See EYRE.

J

Jactitation of Marriage is where a person boasts or gives out that he or she is married to someone, whereby a common reputation of their marriage may ensue; in such a case the person aggrieved may present a petition in the Probate, Divorce and Admiralty Division praying a decree of perpetual silence against the jactitator. These suits are of rare occurrence. If there really has been something in the nature of a marriage, a nullity suit is the more efficacious remedy.

Jactus; Jactura mercium. Jetsam (q.v.).

Jeofail. In the days of oral pleading, which lasted into the fifteenth century, when a pleader perceived any slip in the form of his allegation, he acknowledged his error by the expression *j'ay faillé*, and thereupon obtained liberty to amend. The statutes passed to prevent formal objections being taken after a certain stage in the proceedings were hence called the Statutes of Amendment and Jeofail. See AID BY VERDICT; ARREST OF JUDGMENT; DEMURRER, as regards mistakes in pleadings, etc.

Jerque; Jerquer. To jerque a vessel was to search her for goods liable to duty, and the jerquer was the customs officer who performed this duty.

Jersey. One of the Channel Islands (q.v.).

Jervis' Acts. The popular title of the Indictable Offences Act, 1848, the Summary Jurisdiction Act, 1848, and the Justices Protection Act, 1848, all of which were introduced by Sir John Jervis, then Attorney-General and afterwards Chief Justice of the Common Pleas.

Jesuits. The Roman Catholic Relief Act, 1829, ss. 28-37, contains provisions directed specially against Jesuits; but these provisions have never been enforced and the only attempt to enforce them was defeated in 1902 by the refusal of a Court of summary jurisdiction to issue a summons and by the refusal of the King's Bench Division to issue a *mandamus* to the inferior Court: see 86 *L. T.* 753.

Jetsam, Flotsam and Ligan. Jetsam is where goods are cast into the sea and there sink and remain under water; flotsam is where they continue swimming on the surface of the waves; ligan (or lagan) is where they are sunk in the sea, fastened to a cork or buoy, in order to be found again. In each of these cases the goods belong to the Crown, unless the owner appears to claim them. Jetsam, flotsam and ligan do not fall within the original or common law meaning of "wreck," and therefore do not pass by a royal grant of wreck; but for the purposes of the Merchant Shipping Acts "wreck" includes them. See WRECK.

Jettison is the throwing overboard of goods from necessity to lighten the vessel in a storm, or to prevent capture, or for any other sufficient cause. Jettison is the simplest and oldest instance of general average. See AVERAGE.

Jews. Practically the only disability to which Jews are now subject is inability to present to an ecclesiastical benefice attached to an office in His Majesty's gift (Jews' Relief Act, 1858, s. 4). But where a Jew is the owner of an advowson, he can present to the living. There would appear to be no enactment to the effect that a Jew may not be Lord Chancellor of England. It would further, however, appear that if a Jew were Lord Chancellor, his *ex-officio* rights of ecclesiastical patronage would devolve upon the Archbishop of Canterbury. See the enactment above cited.

See DOMUS CONVERSORUM; ESCHEATOR; EXCHEQUER OF THE JEWS.

John Doe. See EJECTMENT.

Joinder. Joinder of causes of action. The general rule in actions in the High Court (where the matter is governed by Order 18) is that the plaintiff may unite in the same action several causes of action, subject to separate trials being ordered where they cannot conveniently be tried together; but no cause of action can (unless by leave) be joined with an action for the recovery of land, except claims for mesne profits or arrears of rent, or for breach of contract in respect of the same property; provided however that there may be a joinder of a claim for possession in an action for foreclosure or redemption (Ord. 18, rr. 1, 2). Claims *in autre droit* cannot, as a rule, be joined with personal claims; as to claims by or against personal representatives see r. 4 of

Ord. 18. As to the County Court, see County Court Rules, Ord. 4, which is practically the same as Ord. 18 of the R. S. C.

Joinder of parties:—All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative; and the same rule applies to the defendants (as to the High Court see R. S. C. Ord. 16, rr. 1-4; and, as to the County Court, see rr. 1, 2 of Ord. 3 of the County Court Rules). See MISJOINDER; NON-JOINDER; PARTY.

Joinder of issue is where one of the parties joins issue upon the previous pleading, or upon certain parts of it; that is to say, where the party whose turn it is to plead denies every material allegation of fact in the previous pleading, or in a specified part of it, without alleging any new facts in support of his case, and thus puts an end to the pleadings, wholly or to a certain extent. In ordinary cases the reply (q.v.) is a simple joinder of issue on the statement of defence. See R. S. C. Ord. 19, r. 18; ISSUE; PLEADINGS; as to the abolished joinder in demurrer, see ISSUE. See also TENDER OF ISSUE.

In proceedings on a writ of error in criminal cases, the joinder of error was a written denial of the errors alleged in the assignment of errors, and was in the name of the Attorney-General or the King's Coroner and Attorney. It was analogous to a joinder of issue in an action. See ERROR.

Joint.—I. As applied to property (other than choses in action), "joint" signifies that it belongs to two or more persons in such a way that on the death of one of them without having disposed of his interest *inter vivos*, it passes to the survivors, and so on until they have all died but one, who then takes the whole by survivorship. This quality distinguishes a joint ownership from an ownership in common, and also, in the case of land, from the form of ownership known as coparcenary (q.v.) As to the rules relating to joint ownership and ownership in common, see JOINT TENANCY; TENANCY IN COMMON.

II. In the case of bonds, covenants, contracts and other choses in action, when the right of action is vested in two or more persons, so that they must all join in suing upon the bond, etc., then the bond, etc., is said to be joint, as opposed to one which is several, namely, where each of the obligees has a separate interest, and may therefore sue alone. Whether a bond, covenant or the like is joint or several depends much more upon the subject-matter than upon the words employed, for if each of the obligees has a separate interest, the right of action will be several, although expressed to be joint and several. A bond, covenant, or the like, entered into with several obligees, cannot be joint or several at their election, but must be either one or the other. If one obligee releases the obligor, this is sufficient to bar all the obligees; and if one of several joint obligees dies, his interest passes to the survivors. In the case of partners in trade, however, the share of a deceased partner devolves in equity on his personal representatives, and the surviving partners become trustees for them of his share. The same rule applies where two or more persons advance money and take the security to themselves jointly.

A joint ownership of a chose in action cannot be severed at law by either or both of the obligees, but the parties may make a severance which will be binding in equity. See TENANCY IN COMMON.

Two or more persons may be jointly liable to the same debt or demand, and though each is liable for the whole debt, yet they are all considered as together forming one person; they must therefore all be sued together, and a voluntary release to one will discharge them all. (See RELEASE.) On the other hand, if one of them is compelled to pay the whole debt, he is entitled to contribution from the others to the extent of their shares. (See CONTRIBUTION.) On the death of one, his liability passes to the survivors, except in the case of partners, for on the death of a partner his estate remains liable in equity for all partnership debts then existing. Hence it is sometimes said that though a partnership debt is joint at law, in equity it is joint and several: but the rule is only true to the extent above mentioned. A liability may, however, be both joint and several, so that the creditor may sue one or more of the debtors separately, or all of them jointly at his option. And if one of them is compelled to pay the whole debt or more than his proportion, he is entitled to contribution from the others. (See CONTRIBUTION.) If one of them dies, his estate remains liable in the same way that he was. As to the release of such a liability, see RELEASE.

III. In the law of Bankruptcy a receiving order made against a firm operates as if it were a receiving order against each of the partners in the firm (Bankruptcy Rules, 1915, r. 284). When a receiving order has been made against members of a firm, *quâ* partners, the property of the members which vests

in the trustee is divided into two parts, viz., the joint estate, or that of the firm, such as the capital, stock in trade, etc., and the separate estates, consisting of the private property of each partner (see Bankruptcy Rules, 1915, r. 368); and distinct accounts are also kept of the joint or partnership debts, and of the separate debts. This is necessary, because joint creditors (that is, creditors against the firm) are entitled to have their debts paid in full out of the joint estate before the separate creditors (that is, the creditors of each member) can receive anything from the joint estate, while the separate creditors of each partner are entitled to a similar priority of payment out of his separate estate as against the joint creditors (Bankruptcy Act, 1914, s. 33 (6)). A joint and several creditor is one for whose debt the firm is jointly, and all or some or one of its members are or is also separately, liable. Thus, if A and B are trading in partnership as the firm of A and Company, and a bill of exchange is accepted by A and Company, and indorsed by A, the holder of the bill would, in the event of A and B's bankruptcy, be a joint and several creditor, and therefore entitled to prove against both the joint estate of the firm, and the separate estate of A. See CONVERSION; PROOF.

IV. In the case of land registered under the Land Transfer Act, 1875, "joint proprietors" mean any two or more persons who are registered as being together entitled to land, whether concurrently (*e.g.*, as joint tenants, tenants in common, etc.) or successively (*e.g.*, tenant for life and remainderman) (see s. 69)

Joint Account. The rule that where two or more persons advance money and take the security to themselves jointly, each is in equity deemed to be separately entitled to his proportion of the money, so that on his death it passes to his personal representatives and not to his surviving co-lenders, made it usual, in cases where money was advanced by trustees, to insert in the mortgage deed or other instrument of security a declaration that the money belonged to the lenders on a joint account in equity as well as at law, and that the receipt of the survivors or survivor, or his personal representatives, should be a full discharge for any moneys due on the security. The Conveyancing Act, 1881, s. 61, makes it now sufficient to say merely that the money is advanced by the lenders out of money belonging to them on a joint account.

Joint Committee. A standing committee, consisting of equal numbers of justices appointed by quarter sessions and of members of the county council appointed by the council, which deals with the police, the clerk of the peace, clerks of justices, and officers serving both quarter sessions and the council (Local Government Act, 1888, s. 30).

For parliamentary purposes, a joint committee consists of equal numbers of members of each House of Parliament.

Joint Exchequer Board. The Government of Ireland Act, 1914, s. 22, provided that for the purposes of the financial provisions of that Act there should be appointed a board, to be called the Joint Exchequer Board, consisting of two members appointed by the Treasury, two members appointed by the Irish Treasury, and a chairman appointed by the Crown. The Board contemplated by that enactment never came into existence, and the Government of Ireland Act, 1914, was altogether repealed by s. 76 of the Government of Ireland Act, 1920. The latter Act provides by s. 32 that, for the purposes of its financial provisions, there shall be a board, also to be called the Joint Exchequer Board, consisting of two members appointed by the Treasury, one member appointed by the Treasury of Southern Ireland, one member appointed by the Treasury of Northern Ireland, and a chairman appointed by the Crown. But the Act of 1920, although operative as regards Northern Ireland, was always practically waste paper as regards Southern Ireland; as regards the latter area it was superseded provisionally by the Irish Free State Agreement Act, 1922, and finally by the Irish Free State Constitution Act, 1922 (Sess. 2); and the "Irish Free State," which has now replaced "Southern Ireland," is not represented on the Joint Exchequer Board.

Joint Stock Company is a term which was originally applied to those unincorporated companies or large partnerships with transferable shares formed at the beginning of the last century (joint stock companies under the common law), and as to the legality of which doubts were and are entertained. The formation of joint stock companies was legalised and facilitated by various Acts, the first of which was passed in 1825, and the law on the subject has now been codified by the Companies (Consolidation) Act, 1908. See COMPANY.

Joint Tenancy. An estate in joint tenancy, in the strict sense of the phrase, is created where land or any other tenement is conveyed or given to two or more persons to hold in fee, for life, or other estate. Persons may also be joint tenants by wrong, as where two

or more disseise another of any lands or tenements to their own use. (See TITLE.) The term joint tenancy is also applied to personal property, *e.g.*, stock in the funds, although it is not the subject of tenure; hence it is more correct to say that two persons are jointly entitled to stock, or that they have a joint ownership of it. As to choses in action, see JOINT.

When two or more persons are joint tenants of property, they have, with respect to all other persons than themselves, the properties of a single owner. The principal incidents of joint tenancy are as follows:—

Every joint tenant is seised or possessed of the joint property *per my et per tout*, that is, by every part and by the whole; by this is meant that the possession of each is indivisible, and that each has an equal right, so that no one can claim the exclusive possession of any particular part of the property, though each is entitled to his proportion of the rents or other income. It also follows that one joint tenant cannot convey his interest to his co-tenants in the same way that one stranger conveys to another, and therefore the proper mode of conveyance from one joint tenant to another is by release, operating as an extinguishment of the interest conveyed. (See RELEASE.) Every joint tenancy is created by one and the same title (that is, the same devise or the same conveyance), and at one and the same time; hence if land is limited to A for life, and after his death to the heirs of B and C, and B dies in A's lifetime, and afterwards C dies also in A's lifetime, here B and C's heirs are not joint tenants, because the remainder in one moiety of the land vested in B's heirs, while the remainder in the other was still contingent. But under the Statute of Uses, or by a gift by will, two persons may be joint tenants, although they come to their estates at different times. All the joint tenants must be owners in the same interest and in the same capacity; and, therefore, if land is given to two persons, to the one for life, and the other for years, they are not joint tenants (see ESTATE TAIL). So if land is given to the King and to a subject, they are not joint tenants, because the King is seised in his royal or politic capacity *in jure coronæ*, while the subject is seised in his natural capacity. But the most important quality of a joint tenancy is that of survivorship; "as if three joyntenants be in fee simple," says Littleton, "and the one hath issue and dieth, yet they which survive shall have the whole tenements, and the issue shall have nothing. And if the second joyntenant hath issue, and dye, yet the third which surviveth shall have the whole tenements to him and to his heires for ever." But any joint tenant may, by disposing of his share during his lifetime (though not by will) to a stranger, sever the joint tenancy, so far as that share is concerned, so that it will henceforth be held by the stranger as tenant in common with the remaining tenant or tenants, who will continue to be joint tenants as between themselves. Joint tenants may also make partition (q.v.).

An exception to the right of survivorship between joint owners occurs in the case of partners in trade, for in this case the law vests in the executors or administrators of a deceased partner the share of the deceased in all personal chattels in possession (such as merchandise or ships) belonging to the partnership. But this rule does not apply to real estate or choses in action, which by law go by survivorship to the surviving partners. In equity, however, the share of the deceased partner in the real estate and choses in action of the partnership devolves on his executor or administrators, and the surviving partners are therefore trustees of it for his executors or administrators. See also JOINT.

The incident of survivorship being inconvenient where persons are beneficially entitled to property, joint tenancy seldom occurs except in the case of trustees; here the incident is useful, for on the decease of one of the trustees the property vests in the survivors by mere operation of law, without devolving on the representatives of the deceased trustee, and without being affected by any testamentary disposition by him.

See ESTATE; JOINT.

Jointress is a woman entitled to a jointure (q.v.).

Jointure.—I. In the ordinary sense of the word, jointure is a provision made by a husband for the support of his wife after his death. It is either legal or equitable.

A legal jointure is, as Coke says (or rather was, for it has long been practically obsolete), "a competent livelihood of freehold for the wife of lands or tenements, etc., to take effect presently in possession or profit after the decease of her husband for the life of the wife at the least," and was given to her either—(1) at common law, in which case it did not bar the wife's dower; or (2) by way of use before the Statute of Uses; or (3) under the provisions of the Statute of Uses—in which case, if the jointure was made in compliance with the Act, it operated so as to bar the

wife's dower or put her to her election whether she would take the jointure or the dower, according as the jointure was made before or after the marriage.

An equitable jointure generally consists of a rent-charge or annuity payable by the trustees of a marriage settlement to the wife for her life if she should survive her husband, the rent-charge or annuity being generally secured by powers of distress and entry, and by the limitation of the settled lands to trustees for a long term of years. If the settlement is made by a tenant in tail after attaining twenty-one, and during his father's lifetime, the land is disentailed and resettled on the father and son successively for life, with remainder in tail to the son's issue, with power for the son to charge a jointure rent-charge secured by powers of distress and entry in favour of any wife whom he may marry, and to limit a term for securing it. By a separate deed the son exercises these powers in favour of the lady whom he is about to marry.

The acceptance of an equitable jointure by a wife always operated as a bar to her dower. Since the Dower Act, 1833, the doctrine of a jointure (legal or equitable), operating as a bar to dower, is of no practical importance. See DOWER.

II. Jointure in the time of Littleton also meant joint tenancy. The derivation of jointure in the sense of joint tenancy is obvious. The word acquired its meaning of a provision for a wife after her husband's death from the practice of making a provision for a wife by limiting a "jointure" or estate in joint tenancy to her and her husband before marriage, so that the estate would pass to the survivor.

Journals of Parliament. The records made in the House of Lords and the House of Commons of business done, but not of speeches made. Those of the House of Lords date from 1509, and those of the House of Commons from 1547. The journals of the House of Lords, but not those of the House of Commons, are public records (q.v.). Copies of either of the journals which purport to be printed by the printer to the Crown or to either House of Parliament are admissible as evidence (Evidence Act, 1845, s. 3). Forgery, with intent to deceive or defraud, of either journal is felony (Forgery Act, 1913, s. 3 (3) (*g*)).

Journey-hopper. There never was any such person. The statute 8 Hen. 6, c. 5, speaks of "*les regratours du-file appelles yern-choppers*" (the regrators (q.v.) of Yarn called Yerne choppers). Yernchoppers became "Journey-Choppers" in Cowell (1727), "Journ-Choppers" in Jacob (1739), and in a law dictionary of recent date it is "Journey-Hoppers."

Journey's Accounts. Formerly, when a writ abated (see ABATEMENT OF CIVIL PROCEEDINGS) the plaintiff was entitled to have a new writ "By Journey's Accounts," that is to say, within as little time as possible after the abatement. Fifteen days was the usual time.

Judex æquitatem semper spectare debet (*Jenk. Cent.* 45). (A judge ought always to bear equity in mind.)

Judex est lex loquens (7 *Rep.* 4). (The judge is the mouthpiece of the law.)

Judex non reddit plus quam quod petens ipse requirit (2 *Inst.* 286). (A judge does not give more than that for which the plaintiff asks.) This was said in connection with the fact that in real actions the plaintiff could not demand, and the Court could not award, damages. If a jury assess damages in excess of those claimed the Court may, under Order 28, r. 1, permit the statement of claim to be amended and may then enter judgment for the full amount given by the jury.

Judge. A judge is an officer of the Crown who sits to administer justice according to law. Judges are divided into judges of record, not of record, superior and inferior judges, etc. in the same way as the Courts of which they are members. See COURT; CHAMBERS; JUSTICE.

No action will lie against a judge of record for any act done by him in the exercise of his judicial functions; and even inferior justices, and those not of record, cannot be called in question for an error in judgment, so long as they act within the bounds of their jurisdiction. If, however, a judge not of record exceeds his jurisdiction, he is liable to an action by the injured party. See CORAM NON JUDICE; PUBLIC AUTHORITIES.

As to the removal of judges, see DUM BENE SE GESSERIT.

Judge Advocate General is the adviser of the Secretary of State for War in reference to courts martial and other matters of military law. Before 1793 he was the secretary and legal adviser of the board of general officers through whom the King governed the Army. When the office of Commander-in-Chief was created in 1793, the Judge Advocate General ceased to exercise the functions of a secretary, but he was the principal legal adviser of the Commander-in-Chief. He was a member of Parliament, and one of the Ministry for the time being down to 1892. The office was then

conferred on the President for the time being of the Probate, Divorce, and Admiralty Division, who, however, acted mainly through two deputies, a legal and a military Judge Advocate General, whom he was empowered to appoint. In 1905 this arrangement ended and there was created, as part of the War Office, the department of the Judge Advocate General, with a permanent Deputy Judge Advocate General; and this department now advises as to whether the sentences of courts martial, other than those held in India, should be confirmed.

The Judge Advocate General can appoint an officiating judge-advocate to act at courts martial, other than those in India. This officer is practically a clerk of the Court and legal adviser to the court martial, whom he keeps right on matters of law and procedure.

Judge Advocate of the Fleet. This was an officer of the old Court of the Lord High Admiral. There was another officer known as the Counsel to the Admiralty. The two offices were united at the commencement of the reign of Queen Victoria. The holder of the combined offices occupies a position somewhat similar to that of the Judge Advocate General, except that the sentences of naval courts martial are referred to him only when the Admiralty sees fit.

Occasionally the Judge Advocate of the Fleet, but more usually a Deputy Judge Advocate, acts, when the proper naval authority so requires, at naval courts martial; and when he acts his functions are similar to those of an officiating Judge Advocate (q.v.) at military courts martial.

Judge Ordinary. By the Matrimonial Causes Act, 1857, s. 9, the judge of the Court of Probate was made judge of the Court for Divorce and Matrimonial Causes created by that Act, under the name of the Judge Ordinary; he was in effect judge of first instance in all matters within the jurisdiction of the Court. By the Judicature Acts, which transferred the jurisdiction of the Court to the High Court of Justice, the Judge Ordinary was made President of the Probate, Divorce and Admiralty Division of the High Court, and is now so called. See COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

Judge's Notes. When evidence is given *viva voce* on the trial of an action, the judge usually takes notes of the evidence, which are used when it becomes a question what the evidence was, *e.g.*, on a motion for a new trial, or an appeal. The judge is not bound in civil cases either to take notes or to allow them to be used, although in practice he does both; but in criminal cases he must do both the one and the other, for on an appeal in any such case the notes made by the judge of the Court of trial must be furnished to the Court of Criminal Appeal (Criminal Appeal Act, 1907, s. 8; Criminal Appeal Rules, 1908, r. 14), and the Court of Criminal Appeal may order their production (Criminal Appeal Act, 1907, s. 9 (*a*)).

As to notes of a County Court judge in civil cases, see ss. 120, 121 of the County Courts Act, 1888.

Judgment is the decision or sentence of a Court on the main question in a proceeding, or on one of the questions, if there are several. The judgment so pronounced is entered on the records of the Court (see RECORD; ENTER). The term "judgment," however, is also used to denote the reasons which the Court gives for its decision; so that where the Court consists of several judges it may and often does happen that each judge gives a separate judgment or statement of his reasons, although there can be only one judgment of the Court in the technical sense of the word. These judgments are reported as authorities in important cases. (See REPORTS.)

In civil actions, judgments (in the technical sense) are of the following kinds:—

With regard to their conclusive effect, judgments are of two kinds, *in rem* and *in personam* (see IN PERSONAM). A judgment *in rem* is an adjudication pronounced upon the status of some particular subject-matter by a tribunal having competent authority for that purpose. Such an adjudication being a solemn declaration from the proper and accredited quarter that the status of the thing adjudicated upon is as declared, it precludes all persons from saying that the status of the thing or person adjudicated upon was not such as declared by the adjudication. Thus the revenue side of the King's Bench Division having in certain revenue cases a right to condemn goods, its judgment is conclusive against all the world that the goods so condemned were liable to seizure. So a declaration of legitimacy and (it would seem) a judgment of outlawry are in effect judgments *in rem*. A judgment of divorce pronounced by a foreign Court is in certain cases recognised by English Courts, and is then a judgment *in rem*. (See DIVORCE.)

A judgment *in personam* is more accurately called a judgment *inter partes*, for an adjudication upon the status of a particular person (as in the cases mentioned above) is as much

a judgment *in rem* as an adjudication on the *status* of a thing. Judgments *in personam* are those which bind only those who are parties or privies to them; as in an ordinary action of contract or tort, where a judgment given against A cannot be binding on B unless he or someone under whom he claims was party to it.

A final judgment is one which puts an end to the action by declaring that the plaintiff has or has not entitled himself to the remedy he sued for, so that nothing remains to be done but to execute the judgment. Thus, if the plaintiff in an action for damages obtains judgment for £500 damages and costs, the judgment is final.

An interlocutory judgment is one which does not terminate the action, because it is not complete and definite. Thus, if judgment by default is signed against the defendant in an action for damages, it is an interlocutory one, because the amount of the damages has to be assessed, after which final judgment is signed (see INQUIRY); so judgment in a Chancery action for administration or account is in general interlocutory, because the accounts and inquiries remain to be taken and made See FURTHER CONSIDERATION.

A judgment on the merits is where the case has been argued and the Court has decided which party is in the right; such a judgment is given after trial (q.v.); and see MOTION FOR JUDGMENT; VERDICT.

A judgment is not given on the merits when it is founded on some technical rule of procedure; the following are the principal instances:—

Judgment by default is obtained when one party neglects to take a certain step in the action within the proper time, and the judgment so obtained is described by a name indicating the step which ought to have been taken, *e.g.*, judgment in default of appearance (see R. S. C. Ord. 13), judgment in default of delivery of defence (see Ord. 27), etc. Judgment of nonsuit was where the plaintiff failed to appear on the trial, or abandoned the action. See NONSUIT; DISCONTINUANCE.

Judgment by judge's order is obtained either by consent, or on failure by the defendant to satisfy the judge that he has a good or *primâ facie* defence to an action for a liquidated demand (see Ord. 14). To obtain this latter kind, commonly called "judgment under Order 14," the plaintiff takes out a summons supported by an affidavit verifying the cause of action, and stating that he believes the defendant has no defence. If the defendant fails to satisfy the judge that he ought to be allowed to defend the action (see MERITS), the judge either orders judgment to be signed, or allows him to defend on paying the money into Court or giving security. The writ must be specially indorsed. See WRIT OF SUMMONS.

The following kinds of judgment are or were peculiar to the Court of King's Bench or King's Bench Division; some of them are rare in practice, and some are entirely obsolete:—

Judgment by confession is where a defendant gives the plaintiff a cognovit or written confession of the action, by virtue of which the plaintiff signs judgment. (See COGNOVIT.) Where, in an action against several persons for a joint tort, the jury by mistake severed the damages by giving heavier damages against one defendant than against the others, the plaintiff might cure the defect by taking judgment for the greater damages (*de melioribus damnis*) against that defendant and entering a *nolle prosequi* (q.v.) against the others. Judgment of assets *in futuro* or *quando acciderint* (shortly "judgment *quando*"); if a personal representative is sued for a debt of a deceased person and pleads *plene administravit* (q.v.) or a real representative is sued and pleads *riens per descent*, the plaintiff in his reply may confess the truth of the plea and pray judgment of assets *in futuro*; or if a real or a personal representative pleads *plene administravit prætər*, the plaintiff may have immediate judgment of the assets acknowledged to be in the hands of the defendant, and of assets *in futuro* for the residue (see Ord. 32, r. 6). A judgment of assets *quando acciderint*, or *in futuro*, is one to be levied when assets shall come to the hands of the real or personal representative. (See SCIRE FACIAS.) Executions under a judgment *in futuro* can be levied only by leave of the Court or a judge (Ord. 42, r. 23).

If a real or personal representative pleads any other defence and fails, the judgment is usually special, viz., that the debt be levied of the goods or land of the deceased as the case may be; but if he pleads a defence which is false to his own knowledge (*e.g.*, *ne unques executor* or *riens per descent*) then the judgment may be general, viz., that the debt be levied as if the action had been brought against him for his own debt.

In the Chancery Division judgments are generally known by names indicating their objects. Thus a judgment directing an account to be taken is called a judgment for an account, and a judgment entitling a mort-

gagor to redeem the mortgaged property is a judgment for redemption. In an action against a mortgagor, the judgment may be both a personal judgment directing the defendant to pay the mortgage debt, and a foreclosure judgment, or judgment of sale, enabling the plaintiff to foreclose or sell the mortgaged property on default in payment (see *infra*). Judgment against the separate estate of a married woman on a covenant entered into by her is in a special form. See R. S. C., App. F., Forms 1A, 1B, 1E, 1F.

A judgment is enforced by execution against the person or property of the party against whom it is given. (See EXECUTION.) Formerly a judgment for the payment of money operated as a charge upon all the lands, tenements, and hereditaments of the person against whom it was entered up, in the same way as if he had charged them by writing under his hand. Provision was made for registration of such judgments. (See REGISTRATION.) No judgment entered up after the 29th July, 1864, affected any land until it had been actually delivered in execution; the writ was registered in the name of the debtor (Judgments Act, 1864, s. 1). Now, under s. 2 of the Land Charges Act, 1900, no judgment operates as a charge on land unless a writ or order for enforcing it has been registered as mentioned in that section; and this applies also to recognizances.

A judgment may in some cases be enforced in other Courts than that in which it was originally given; thus, under the County Courts Act, 1888, s. 151, a judgment of a County Court may in certain cases be removed into the High Court of Justice, and then execution may be issued as if it had been a judgment of the High Court; and under s. 158 of the same Act a judgment obtained in one County Court district may be enforced in any other such district. A County Court may (under the Debtors Act, 1869 (q.v.)), in a proper case, commit a debtor to prison for non-payment of a sum due under a judgment of the High Court. By the Judgments Extension Act, 1868 (31 & 32 Vict. c. 34), a judgment obtained in a superior Court of England, Scotland, or Ireland, may be registered in a superior Court of either of the other two countries, and then has the same effect as if it had been originally obtained in the latter Court. This is done for the purpose of issuing execution in England on a judgment obtained in Scotland or Ireland, and *vice versâ*: but the position as regards the Irish Free State is at present unsettled.

A judgment may in some cases be transferred from one person to another; thus where, in a foreclosure action against the mortgagor of land, whose equity of redemption had been purchased by a third person, personal judgment for the mortgage debt was given against the mortgagor, and a foreclosure judgment was given against the mortgagor and his purchaser, it was ordered that, in the event of the purchaser redeeming the mortgage, the mortgagee (the plaintiff) should transfer to him the benefit of the personal judgment against the mortgagor, and that he should be at liberty to enforce it in the name of the plaintiff upon indemnifying him against his costs and expenses. As to assigning judgments to sureties, see SURETY.

In some cases a judgment may give rise to a fresh cause of action. Thus, if it becomes necessary to enforce a judgment against persons who have succeeded to the liability of the original defendants, an action must be brought for that purpose. So an action may be brought to set aside a judgment obtained by fraud. At common law, every judgment for payment of a sum of money creates a debt on which the successful party may bring an action, and in some cases he could not enforce it in any other way, *e.g.*, if he had allowed a year and a day to elapse without issuing execution; but such a proceeding was never favoured if there was another remedy for enforcing the judgment. The statute 13 Edw. 1, c. 45, enabled a plaintiff to bring a *scire facias* (q.v.) on his judgment after a year and a day. And to discourage unnecessary actions on judgments, the statute 43 Geo. 3, c. 46, directed that the plaintiff should not be entitled to costs, except by special order of the Court. Under the modern practice, execution may be issued as of right within six years from the judgment, and by leave of the Court at any time afterwards (see R. S. C., Ord. 42, r. 23), without bringing an action on the judgment, and such actions therefore appear to be practically obsolete. An action cannot be brought upon a County Court judgment which has been removed into the High Court (County Courts Act, 1888, s. 151).

A judgment given *in personam* for an ascertained sum by a foreign Court of competent jurisdiction is considered in England as *primâ facie* evidence of the defendant's liability to pay the amount to the plaintiff, and may therefore be the subject of an action in the English Courts. So if A brings proceedings against B in a foreign country and

fails, and then sues B for the same cause of action in an English Court, B may defeat the second action by pleading the foreign judgment as *res judicata*. In the latter case the judgment is conclusive. Where, however, an action is brought here to enforce a foreign judgment, it seems that our Courts will so far examine into it that if the proceedings by which it was obtained, or the law on which it is founded, are "repugnant to natural justice," or contrary to some principle of morality or public policy recognized by English law, our Courts will refuse to enforce it. As to proof of a foreign judgment, see the Evidence Act, 1851, s. 7.

In criminal proceedings, the judgment is the sentence of the Court on the verdict of the petty jury, or on the prisoner pleading guilty to the indictment. Where the jury acquits the prisoner, the judgment is that he be discharged of the premises; if he pleads guilty or is convicted the judgment declares the punishment which he has to suffer; *e.g.*, death, imprisonment, fine, etc.

See CRIMINAL APPEAL; RES JUDICATA; REVIVOR.

Judgment Creditor; Judgment Debtor; Judgment Debts. See COMMITTAL; DEBT; DEBTORS ACT, 1869.

Judgment-debtor Summons. This is quite distinct from a judgment summons (q.v.). It was a process issued by a judgment creditor under the repealed Bankruptcy Act, 1861, against a judgment debtor who in default of payment might be adjudged bankrupt. The present equivalent is a bankruptcy notice (q.v.).

Judgment Summons. The process used to procure the committal (q.v.) of a judgment debtor.

Judicatores terrarum. Anciently these were officials in the County Palatine of Chester who performed certain duties in connection with writs of error out of Chancery.

Judicature Acts. See CENTRAL OFFICE; COURT OF APPEAL; SUPREME COURT OF JUDICATURE.

Judices non tenentur exprimere causam sententiæ suæ (*Jenk. Cent.* 75). (Judges are not bound to explain the reason of their decision.)

Judicia in curia regis reddita non adnihilentur, sed stent in suo robore, quousque per error aut attinotam adnullentur (2 *Inst.* 360). (Judgments given in the King's Court are not to be made as nothing, but are to remain in full force until such time as they are reversed upon error or attaint.) In Coke's time error and attaint were the only means of reviewing a judgment of a Court or a verdict of a jury. The various appellate tribunals of modern times are within the spirit of the maxim; and arbitrary and capricious departmental interference with the decisions of the Courts is essentially the very thing at which the maxim is aimed.

Judicia in deliberationibus crebro maturescunt, in accelerato processu nunquam (3 *Inst.* 210). (Judgments frequently become ripe as the result of deliberation, but never when they are delivered in a hurry.)

Judicial. See EXTRAJUDICIAL; REMEDY; WRIT.

Judicial Authority. For the purposes of the Lunacy Acts, 1890 to 1908, this expression means a justice appointed to exercise the powers conferred on "a judicial authority" under these Acts, or a County Court judge (Lunacy Act, 1890, ss. 9, 10). See RECEPTION ORDER.

Judicial Commissioners. These are *quasi*-judicial bodies with power to give decisions binding in law. They are the Railway and Canal Commissioners (q.v.), the Income Tax Commissioners (q.v.), the Land Tax Commissioners (q.v.), the Commissioners of Sewers (see SEWER) and, as regards the incidence of tithe rent-charge, the Ministry of Agriculture and Fisheries (q.v.) under the various Tithe Acts.

Judicial Committee of the Privy Council was created by the Judicial Committee Act, 1833, for the purpose of hearing all appeals or complaints in the nature of appeals which before the passing of the Act could be brought before the King or the King in Council, and also certain other appeals, which were, as the result of many subsequent enactments, previously heard by other tribunals.

The Judicial Committee now consists of the President and ex-Presidents of the Privy Council, the Lord Chancellor, the six Lords of Appeal in Ordinary, such other members of the Privy Council as have been or are Lords of Appeal in Ordinary, judges of the Supreme Courts of England or Ireland or of the Court of Session in Scotland, and not more than seven judges or ex-judges of the superior Courts of the self-governing colonies, or of any other British possession fixed by Order in Council, who are Privy Councillors, and not more than two judges or ex-judges of any High Court in India who are Privy Councillors and whom the King may nominate.

The following are the principal matters in which the Judicial Committee has jurisdiction.

(i) Appeals from Courts in the colonies or dependencies of the United Kingdom, such as

India, the Irish Free State, Canada, Australia, the Channel Islands, etc. In general the right to appeal is limited to cases involving a certain minimum value, unless special leave to appeal is obtained.

(ii) Complaints of amotion from office. See AMOTION.

(iii) Ecclesiastical appeals. (See ECCLESIASTICAL COURTS.) The archbishops and bishops act as assessors on such appeals.

(iv) Appeals in certain Admiralty matters; most Admiralty appeals now go to the Court of Appeal.

(v) Appeals under s. 4 of the Copyright Act, 1911, against the refusal of the owner of the copyright in the work of a deceased person to republish or permit republication.

(vi) Appeals against schemes relating to the endowments of an endowed school.

The jurisdiction which the Committee formerly had in lunacy and as to the confirmation and extension of patents has been taken away.

The Committee sits in the Council Chamber at Whitehall. Appeals are argued before it as they are before a Court. But the Committee is not a Court. It makes a "report" to the King advising that the appeal should be allowed or disallowed as the case may be: dissenting opinions are not disclosed, and there is nothing to show whether the decision is unanimous or otherwise.

Under the Government of Ireland Act, 1920, s. 52, an appeal lies to the Judicial Committee from any decision of the Joint Exchequer Board (q.v.) which involves a question of law. This now applies only to Northern Ireland. See REFERENCE.

Judicial Oath. This expression sometimes means an oath (q.v.) taken in the course of a proceeding before a Court, judge or justice; but it generally means the form of oath set out in s. 4 of the Promissory Oaths Act, 1868, which all judges and justices of the peace must, under s. 6 of that Act, take after acceptance of office.

Judicial Proceeding. See PERJURY.

Judicial Separation. A decree of judicial separation may be pronounced by the High Court in the Probate, Divorce and Admiralty Division on the petition of either husband or wife (1) in all cases in which a divorce *a mensâ et thoro* (q.v.) might have been obtained in the Ecclesiastical Courts, and (2) on the ground of either adultery or cruelty, or desertion without reasonable cause for two years or upwards (Matrimonial Causes Act, 1857, ss. 7, 16); and a judge of assize has (see DIVORCE COURT) like jurisdiction as regards certain prescribed classes of causes. The decree has the same effect as a divorce *a mensâ et thoro* had, that is to say, it does not affect the marriage, but it puts an end to cohabitation, and places the wife in the position of a *feme sole* as regards her capacity of acquiring property etc. (*ib.* s. 25), but in view of the Married Women's Property Act this latter effect is not of much importance now. See ALIMONY; PROTECTION ORDER; SETTLEMENT; DESERTION; SEPARATION ORDER.

Judicial Trustee. This is a trustee appointed by the Court under the Judicial Trustees Act, 1896, and the Rules made thereunder. He may be appointed either as sole trustee or as co-trustee on the application of a person creating or intending to create a trust, or of a trustee, or of a beneficiary: he acts under the directions of the Court and is remunerated as the Court may direct; and his accounts are audited annually under the direction of the Court (s. 1). Comparatively little use has been made of the Act, the judicial trustee being for practical purposes replaced by the Public Trustee (q.v.).

Judicia suum effectum habere debent (2 *Inst.* 341). (Judgments ought each to produce an effect.) That is to say, no Court ought to pronounce a judgment which will go forth without respect and return without effect. Compare JUDICIUM NON DEBET, ETC.

Judici officium suum excedenti non paretur (*Jenk. Cent.* 139). (Effect is not given to the decision of a judge delivered in excess of his jurisdiction.) As regards inferior Courts an order made in excess of jurisdiction may be quashed on *certiorari*. Compare JUDICIUM A NON, ETC.

Judicis est jus dicere, non dare (*Lofft*, 42). (It is for the judge to declare the existing law and not to make new law.) Compare OMNIS INNOVATIO, ETC.

Judicis officium est opus diei in die suo perficere (2 *Inst.* 256). (It is the duty of a judge to finish the work of each day within that day.) This is cited only in connection with the Statute of Westminster I. c. 46, which enacted that the justices of the King's Bench should dispose of pleas determinable on any one day before taking up those determinable on the next day.

Judicis officium est ut res ita tempora rerum quærere, quæsito tempore tutus eris (*Co. Litt.* 171). (It is the duty of a judge to inquire as well into the time of things as into things themselves; by inquiring into the time you will be safe.) This was cited merely in con-

nection with the question whether in a case of partition by coparceners the share taken by each was of equal yearly value at the time of the partition.

Judicium a non suo judice datum nullius est momenti (10 *Rep.* 76). (A judgment pronounced without jurisdiction has no effect in the law.) The maxim is cited by Coke as embodying the principle that such a judgment is of no greater legal effect than if the words contained in it were uttered by any stranger. Compare JUDICI OFFICIUM, ETC.

Judicium Dei. The judgment of God, that is to say, trial by ordeal, the result of which was popularly supposed to express the judgment of God.

Judicium non debet esse illusorium (2 *Inst.* 341). (A judgment ought not to be illusory.) Compare JUDICIA SUM, ETC.

Judicium pilorie. (The judgment of the pillory.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 201), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large*, as 51 Hen. 3, st. 6.

Judicium semper pro veritate accipitur (2 *Inst.* 380). (A judgment (once given) is accepted as right—until, of course, it is reversed or set aside.) Compare NEMO POTEST CONTRA, ETC.

Jugum terræ. A "yoke of land." It was half a plough-land (q.v.).

Junior. The expression "junior barrister" (or "junior") means any barrister who is not a King's Counsel.

Junior Right. The right of some person other than an eldest son to inherit freehold. See GAVELKIND; BOROUGH ENGLISH; ASSART-LAND; BOND-LAND; COTMAN-LAND; FARTHING-LAND.

Jura ecclesiastica limitata infra limites separatas (3 *Buls.* 53). (Ecclesiastical laws are limited within separate bounds.) This maxim is quoted from Bracton by Coke, L.C.J., in the course of a judgment.

Jura eodem modo destituuntur quo constituuntur (2 *Dwarr. Stat.* 672). (Laws are abrogated by the same means by which they were made.) It is in general the rule that a statute remains in force until it is repealed by another statute, but in 1902 the King's Bench Division virtually decided that s. 34 of the Roman Catholic Relief Act, 1829, had become abrogated by non-user: see *R.* v. *Kennedy* (1902), 86 L. T. 753. Compare EODEM MODO, ETC.

Juramentum episcoporum; Juramentum escætorum; Juramentum majorum et ballivorum. These are respectively the Oath of the Bishops, the Oath of Excheators, and the Oath of Mayors and Bailiffs. All these are printed in the *Statutes of the Realm* (Vol. 1. p. 249) among the *Statutes of Uncertain Date*. None of them are in the *Statutes at Large*.

Juramentum est indivisibile, et non est admittendum in parte verum et in parte falsum (4 *Inst.* 279). (An oath is indivisible, and is not to be received as partly true and partly false.) Compare FALSUS IN UNO, ETC.

Jura natura sunt immutabilia (*Hob.* 87). Hobart, C.J., cites this maxim as an authority for the proposition that "an Act of Parliament made against natural equity. . . is void in itself": but he spoke in 1614, and things have changed since then.

Jura publica anteferenda privatis (*Co. Litt.* 130). (Public rights are to be preferred to private.) Compare IN CASU, ETC., and SALUS POPULI, ETC.

Jura publica ex privato promiscue decidi non debent (*Co. Litt.* 181*b*). (Public rights ought not to be decided *obiter* in connection with a private transaction.) An almost identical maxim is at *Co. Litt.* 130.

Jurare est Deum in testem vocare, et est actus divini cultus (3 *Inst.* 165). (To swear is to call God to witness, and is an act of Divine worship.) Compare NON EST ARCTIUS, ETC.

Jura regalia. (Sovereign rights.) Such rights, including full criminal jurisdiction, were exercised under royal grant by the Lords Marchers (q.v.). In other cases they had been assumed without such grant by various great feudal lords during the two hundred years succeeding the Conquest; and in 1274 Edward I. proceeded to attack this usurped jurisdiction (see HUNDRED ROLLS). See COUNTY PALATINE; REGALIA; SERVITIUM.

Jura regis specialia non conceduntur per generalia verba (*Jenk. Cent.* 103). (No special rights are given to the king by general words.)

Jura sanguinis nullo jure civili dirimi possunt (*D.* 50, 17, 8; *Bac. Max. reg.* 11). (The rights of blood cannot be destroyed by any right arising out of the law.) This maxim is cited by Bacon in connection with questions as to the effect of attainder.

Jurat is a memorandum written at the end of an affidavit, stating the place where, and the date when, the affidavit was sworn, followed by the signature of the commissioner or other person before whom it was sworn and concluding with his description (R.S.C., Ord. 38, r. 5).

In the Cinque Ports (q.v.) a jurat was a

municipal officer resembling the modern alderman. The name, as well as that of "bailiff" (another municipal officer of the Cinque Ports who was of higher rank than the jurat) appears to have been borrowed from the legal system of the Channel Islands. See LAST-COURT.

Jurata. See ASSISA VESTITUR. The Common Law Procedure Act, 1852, s. 104, enacted with reference to juries and jury process that the entry *jurata ponitur in respectu* should no longer be used.

Jurato creditur in judicio (3 *Inst.* 79). (In a trial credit is given to such statements as are made on oath.) This means merely that statements, if they are to be believed at all, must be made on oath. The maxim is quoted by Coke in connection with the statute 1 Jac. 1, c. 4, s. 6, which provided that in certain cases of felony the witnesses for the accused might be sworn.

Juratores debent esse vicini, sufficientes, et minus suspecti (*Jenk. Cent.* 141). (Jurors ought to be neighbours of sufficient estate, and above suspicion of partiality.) This maxim related to the time when a jury was required to consist of *probi homines de vicineto.*

Juratores sunt judices facti (*Jenk. Cent.* 61). (Juries are the judges of fact.) Compare AD QUAESTIONEM FACTI, ETC.

Juratus. A jurat (q.v.) in the sense of a municipal officer.

Jure coronæ. See FRANCHISE; PREROGATIVE.

Jure mariti. See JUS MARITI.

Jure naturæ æquum est neminem cum alterius detrimento et injuriâ fieri locupletiorem (*D.* 50, 17, 206). (In the law of nature it is held just that no one should be enriched by the loss or injury of another.)

Juridical Days. Days on which legal business could be transacted, as distinguished from days (*dies non juridici* (q.v.)) on which it could not.

Juri non est consonum quod aliquis accessorius in curiâ regis convincatur antequam aliquis de facto fuerit attinctus (2 *Inst.* 183). (It is not lawful that any accessory should be convicted in the king's court before someone has been attainted of the fact.) This statement, or maxim, is contained in a disquisition on the Statute of Westminster I., c. 14, which provided that no accessory to a principal who had been outlawed should be outlawed before the principal had been attainted. The statement never applied generally. See ACCESSORY.

Jurisdiction.—I. Jurisdiction is the power of a Court or judge to entertain an action, petition or other proceeding. When a proceeding in respect of a certain subject-matter can only be brought in one Court, that Court is said to have exclusive jurisdiction; when it can be brought in any one of several Courts, they are said to have concurrent jurisdiction. Thus, as an action for the administration of an estate or trust property amounting in value to not more than £500 may be brought either in the High Court of Justice or in a County Court (see County Courts Act, 1888, p. 67), they have concurrent jurisdiction; but if the value of the property exceeds £500 the action can only be brought in the High Court, which has exclusive jurisdiction.

Where the jurisdiction of a Court is limited either by the amount or value of the property in litigation, or with reference to the question where the cause of action arose, it is called a Court of limited jurisdiction, as opposed to a Court of general jurisdiction.

A Court is said to have original jurisdiction in a particular matter when that matter can be initiated before it; while a Court is said to have appellate jurisdiction when it can only go into the matter on appeal after it has been adjudicated on by a Court of first instance. See COURT.

While the different jurisdictions of the Common Law and Chancery Courts existed, the Court of Chancery, in addition to its exclusive and concurrent jurisdiction, was said to have an auxiliary or ancillary jurisdiction, by which was meant that it entertained suits for relief required to obtain complete justice in another Court; the principal instances of such suits were bills for discovery, bills for the perpetuation of testimony, and bills of peace (q.v. and DE BENE ESSE; QUIA TIMET).

As to the jurisdictions of the various Courts, see the respective titles.

II. Jurisdiction also signifies the district or geographical limits within which the judgments or orders of a Court can be enforced or executed. This is sometimes called territorial jurisdiction. In the practice of the High Court it is not usual to allow an action to be brought if it is obvious that it cannot be enforced, such as an action to recover land in a foreign country; nor will the Court allow an action to be brought against a person who is out of the jurisdiction, unless the property in question in the action (if any) is situate within the jurisdiction, or unless some part of the cause of action arose within the jurisdiction (see Ord. 11, r. 1). See CAUSE OF ACTION; IN PERSONAM; SERVICE; EXCLUSIVE JURISDICTION; CONCURRENT JURISDICTION.

Juris effectus in executione consistit (*Co. Litt.* 289). (Effect is given to the law by execution.) This is one out of a number of maxims relating to execution which Coke has cited together. See EXECUTIO, ETC.

Jurisprudence.—I. In the proper sense of the word, jurisprudence is the science of law, namely, that science which has for its function to ascertain the principles on which legal rules are based, so as not only to classify those rules in their proper order and show the relation in which they stand to one another, but also to settle the manner in which new or doubtful cases should be brought under the appropriate rules. Jurisprudence is more a formal than a material science; it has no direct concern with questions of moral or political policy, for they fall under the province of ethics and legislation; but when a new or doubtful case arises to which two different rules seem, when taken literally, to be equally applicable, it may be, and often is, the function of jurisprudence to consider the ultimate effect which would be produced if each rule were applied to an indefinite number of similar cases, and to choose that rule which, when so applied, will produce the greatest advantage to the community.

Jurisprudence is mainly based on comparative law, that is, on the comparative study of the legal institutions of various countries, because such a study makes it more easy to separate the essential elements of the science from its historical accidents.

II. "Jurisprudence" is also used, incorrectly, as synonymous with "law." The imposing quadrisyllable is constantly introduced into a phrase, solely on grounds of euphony. Thus we have books upon 'Equity Jurisprudence' which are nothing more nor less than treatises upon the law administered by Courts of Equity; and we hear of the Jurisprudence of France or Russia, when nothing else is meant than the law which is in force in those countries respectively.

Juris utrum was a writ or action by an incumbent to recover possession of land held by him in right of the church, etc. It was so called because it raised the question whether the land was the lay fee of the tenant (defendant) or frankalmoign belonging to the church. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Juror; Jury. A jury is a number of persons summoned to inquire on oath into a question of fact depending in a judicial proceeding. The members of the jury are called jurors or jurymen.

I. In actions in the High Court, when the trial takes place before a jury, the jurors are twelve men possessing the necessary qualification (q.v.). Common juries are summoned from the class of tradesmen, clerks, etc.: special juries consist of merchants, bankers, independent gentlemen, etc. (see Juries Act, 1870, s. 6.), and are only summoned for the trial of important or difficult cases, either party to an action being entitled to have the case so tried at the risk of having to bear the extra expense. (See CERTIFICATE.) The jurors are selected by ballot from the panel or list furnished by the summoning officer (see PANEL), subject to the right of challenge (q.v.) by the parties. As to the cases in which a trial by jury takes place—which are now very few—and the course which it generally follows, see TRIAL. As to the discharge of a jury and the withdrawal of a juror, see DISCHARGE; WITHDRAWAL.

Juries are also summoned in actions for other purposes than that of trial. Thus a writ of inquiry (q.v) requires a jury, as does the execution of a writ of elegit (q.v.).

II. In County Court actions a jury consists of eight persons (County Courts Act, 1888, s. 102).

III. As to other kinds of juries in civil matters, see COURT LEET; EXTENT; HOMAGE; INQUEST OF OFFICE; INQUISITION; JUS PATRONATUS; LUNACY.

The preparation of the lists of persons liable to serve as jurors is now governed by the Juries Act, 1922.

IV. In criminal procedure the following kinds of jury exist:

A grand jury is summoned for every commission of "oyer and terminer" and "general gaol delivery," and at every quarter sessions (see those titles), to inquire into, present, and do all those things which shall then and there be commanded them on the part of the King. Their principal duty is to inquire into bills of indictment, and to present them, if they think a *primâ facie* case has been made out against the accused. (See INDICTMENT; PRESENTMENT.) A grand jury consists of from twelve to twenty-three persons, and every presentment must be by twelve at the least. They sit in private.

The jury by which criminal cases (indictments, informations, etc.) are tried, is sometimes called a petty jury, as opposed to the grand jury. It consists of twelve persons, who are liable to be challenged. See CHALLENGE.

In important cases of misdemeanour in the

King's Bench Division a special jury may be obtained on the application of either prosecutor or defendant (Juries Act, 1825, s. 30).

Formerly every alien who was tried on a criminal charge in England was entitled to what was called a jury *de medietate linguæ*, that is, a jury one half of which consisted of aliens. This kind of jury is now abolished (see BILINGUIS), but it is said that where an indictment is found against a scholar or other person having the privilege of the University of Oxford, he is entitled to be tried in the University Court by a jury *de medietate*, half of freeholders, and half of matriculated persons. See UNIVERSITY COURTS.

Where, in a criminal prosecution, a female prisoner alleges herself or appears to be pregnant, a jury of twelve matrons may be impanelled to try whether she is so or not. They choose one of their number to be foreматron.

See REPRIEVE.

"Jury," Norman-French *jurée* (Britton, 134 a), is derived from *jurata*, which seems to be a contraction for *assisa* or *recognitio jurata*, the sworn assise or recognition (q.v.), from the oath taken by the members of the assise, (who were called jurors), to try the cause justly. The modern jury, however, is not directly derived from the assise, which was a statutory mode of trial, but from the practice which grew up after the introduction of the assise, of suitors consenting that their actions should be tried by a *jurata* or jury, in preference to the trial by duel.

See DISTRINGAS JURATORES; HABEAS CORPUS JURATORES; VENIRE FACIAS JURATORES.

Jus accrescendi is that right of survivorship which is peculiar to joint ownership, joint rights, and joint liabilities. (See JOINT). Survivorship does not occur in the case of merchants and other partners, the rule being —*Jus accrescendi inter mercatores pro beneficio commercii locum non habet* (*Co. Litt.* 182); that is to say, in the interest of commerce, the acquisition of property by survivorship is unknown as between merchants.

Jus accrescendi præfertur oneribus (*Co. Litt.* 185). (The right of survivorship is preferred to incumbrances.) Thus, if one of two joint tenants grants a right of way over the land held by them, this does not bind the survivor.

Jus accrescendi præfertur ultimæ voluntati (*Co. Litt.* 185). (The right of survivorship is preferred to the last will.) The survivor of joint tenants takes even though the joint tenant who has died has devised his interest to a third person.

Jus constitui oportet in his quæ ut plurimum accidunt, non quæ ex inopinato (*D.* 1, 3, 3). (Law ought to be made with a view to those cases which happen most frequently, and not to those which are unexpected.) The corresponding maxim of our law is *Ad ea*, etc. (q.v.).

Jus curialitatis Angliæ. The curtesy (q.v.) of England.

Jus descendit, et non terra (*Co. Litt.* 345). (The right descends and not the land.) Coke uses the words in the following context:— "When an estate is turned to a right as by discontinuance, disseisin, etc., . . . it shall be said . . . *jus descendit et non terra*": see RIGHT.

Jus disponendi (the right of disposing) is an expression used either generally to signify the right of alienation, as when we speak of depriving a married woman of the *jus disponendi* over her separate estate, or specially in the law relating to sales of goods, where it is often a question whether the vendor of goods has the intention of reserving to himself the *jus disponendi*, that is, of preventing the ownership from passing to the purchaser, notwithstanding that he (the vendor) has parted with the possession of the goods. Such a question becomes of great importance when a vendor has despatched goods to a purchaser in a distant place, and the latter becomes insolvent before paying for them, because if the vendor has effectually reserved the *jus disponendi* he can reclaim the goods. See APPROPRIATION; STOPPAGE IN TRANSITU.

Jus duplicatum. See DROIT.

Jus est norma recti; et quicquid est contra normam recti est injuria (3 *Buls.* 313). (A legal right must be within the rule of right; and whatever is contrary to the rule of right is a wrong.) Compare FRAUS ET JUS, etc.

Jus ex injuriâ non oritur (4 *Bing.* 639). (A right does not arise out of a wrong.) Compare EX DOLO, etc., EX TURPI, etc.

Jus gentium. See LAW OF NATIONS.

Jus in personam; in rem. See IN PERSONAM; RIGHT.

Jusjurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur (*Grotius* l. 2, c. 13, § 10). (Oaths differ in form but are essentially the same; and every form of oath must involve a calling of God to witness).

Jusjurandum inter alios factum nec nocere nec prodesse debet (4 *Inst.* 279). (An oath made by others in another proceeding ought

neither to hurt nor profit.) This is a variant of the well-known *Res inter alios*, etc. (q.v.).

Jus mariti. The *jus mariti* (or "right of a husband") is that right to the chattels of a woman which, in the absence of special provisions, her husband, before the Married Women's Property Act, 1882, acquired on their marriage; hence a gift to or settlement on the wife of property to her separate use was said to exclude the *jus mariti*. If a married woman having personal estate settled to her separate use die without disposing of it, the husband will be entitled, *jure mariti*, to so much of it as consists of chattels in possession, that is to say, they vest in him as if they had not been settled on the wife; while to entitle himself to so much of it as consists of choses in action he must take out letters of administration to his wife's estate. He is responsible for her debts to the extent of property acquired *jure mariti*.

Jus monetæ comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur (*Dav.* 20). (The right of coining money is comprehended amongst those rights of royalty which are never separated from the royal sceptre.) But this general statement was made in an Irish Court—in the *Case of Mixed Monies*—and the fact seems to have been overlooked that the *jura regalia*—or some of them—were occasionally granted to subjects: see LIBERTATES REGALES, ETC.

Jus naturale est quod apud omnes homines eandem habet potentiam (7 *Co.* 12). (Natural right is that which has the same force among all men.) This is a definition from Aristotle which Coke inserts in the report of *Calvin's Case* (q.v.).

Jus non habenti tuto non paretur (*Hob.* 146). (It is safe to refuse obedience to one who has no legal right.) Coke quotes this maxim with regard to the Pope after declaring that something done by the Pope was *coram non judice*.

Jus patronatûs in ecclesiastical law signifies (1) the right of advowson (q.v.), or more commonly, (2) a proceeding to try the question who is entitled to a right of presentation which is claimed by different persons. It is an inquest of office, which is tried before the bishop (or commissioners appointed by him) by a jury of clerks and laymen. The result of the trial does not conclude the question, but merely justifies the bishop in admitting the clerk for whose title the verdict is given. See DISTURBANCE; QUARE IMPEDIT.

Jus primæ noctis. This is popularly supposed to have been a seignorial right of *concubitus* with the wife of a tenant on her wedding night. As a matter of fact, the *jus primæ noctis*, in this sense, is as purely mythical as Pope Joan. Sir J. S. Frazer, in his *Folk Lore in the Old Testament*, shows clearly that there is no trace of any such right in any authentic record of English—or Scottish—customs, and that the assertion of the former existence of such a right is made without proof or even probability. The *jus primæ noctis* in reality was the dispensation from the obligation of continence on the first three nights (the "Tobias Nights") imposed by the early Church on newly-married couples. See MARCHET.

Jus respicit æquitatem (*Co. Litt.* 24). (Law bears equity in mind.) This is one of a group of maxims about equity given at *Co. Litt.* 24.

Jus spatiendi et manendi. (The right to stray and remain.) Neither the public at large nor the inhabitants of a particular place have any such right. The public at large may have the right to pass across a particular open space, that is to say, there may be a public right of way, and the inhabitants of a particular place may have the right to play lawful games upon an open space; but the rights of neither the one nor the other go any farther.

Jus superveniens auctori accrescit successori (*Halk.* 76). (A right with which a former owner of land has been invested descends to him who takes afterwards.)

Just Allowances. It is provided by R. S. C., Ord. 33, r. 8, that in the taking of any account directed by any judgment or order all allowances shall be made without that being expressly directed. This means that credit shall be given for all payments or expenses reasonably and properly made or incurred.

Jus tertii. When a person who is *primâ facie* liable to A., on being sued by him sets up as a defence that the money or property claimed does not belong to A., but belongs by a paramount title to B., he is said to set up the *jus tertii* (right of a third person).

The general rule is, that a wrongdoer cannot set up the *jus tertii*. Therefore when A. seized goods in the possession of B., and on being sued by B. set up as a defence that B. had no title because the assignment from C. under which he claimed was fraudulent as against A., and that the goods belonged to A. under a valid assignment from C., it was held that A., being guilty of conversion, and therefore a wrongdoer, could not set up the *jus tertii* against B. So an agent cannot refuse to

account to his principal or otherwise dispute his title by setting up the *jus tertii*, unless he does so under the authority of the third person.

Justice. The judges of certain Courts are called justices. Thus, before the Judicature Act, 1873, the judges of the Queen's Bench and Common Pleas were called justices of those Courts, the principal judge of each Court being called respectively the Lord Chief Justice of England, and the Lord Chief Justice of the Common Pleas. The latter title has been abolished. (See SUPREME COURT.) With the exception of the Lord Chancellor, the Lord Chief Justice, and the Master of the Rolls (Judicature Act, 1873, ss. 5, 32), all the judges of the High Court appointed since the Act came into operation are called justices of the High Court (Judicature Act, 1877, s. 5). See BARON.

As to the Lords Justices of Appeal, and the justices of the peace, see those titles. As to justices of assize, see ASSISE; also EYRE; TRAILBASTON.

The word *justitia*, in the sense of judge, occurs in our oldest books; otherwise one might suppose "justice" to be derived from *justiciarius*.

Justice in Eyre of the Forest. See FOREST.

Justices in Eyre Seat; Justice Seat. See ATTACHMENT OF THE FOREST.

Justices of Appeal. Under the Judicature Act, 1875, s. 4, this was the title of those members of the Court of Appeal who now, under the Judicature Act, 1877, s. 4, are known as Lords Justices of Appeal. See SUPREME COURT.

Justices of the Jews. These were the judicial officers who presided in the Exchequer of the Jews (q.v.). Some of them were Jews.

Justices of the Peace are persons appointed by the Crown to be, or persons who *ex officio* are, justices within a certain district (*e.g.*, a county or borough) for the conservation of the peace, and for the execution of divers things, comprehended within their commission and within divers statutes, committed to their charge.

Their authority is either ministerial or judicial. They are said to act ministerially in cases of felony or misdemeanour, where they merely initiate the proceedings by issuing a warrant of apprehension, taking the depositions, and committing for trial. They act judicially in quarter sessions (q.v.), and in all cases where they have summary jurisdiction, whether criminal, as in cases of common assaults, drunkenness, etc.; or civil, as where they have to adjudicate between master and servant, or landlord and tenant, and in affiliation cases, etc. See PETTY SESSIONS.

By virtue of their commission, justices of the peace have jurisdiction in all matters relating to the preservation of the public peace; and in case of an actual or apprehended breach of the peace within their own view, they may commit the offender without warrant or information. Most commonly, however, their jurisdiction is exercised by binding over persons to keep the peace. See BREACH OF THE PEACE.

Justices have jurisdiction in claims for seamen's wages to an amount not exceeding £50 (Merchant Shipping Act, 1894, s. 164).

The King's Bench Division of the High Court on its Crown side takes cognizance of breaches of the peace, and judges of assize sit under a commission of the peace as well as under commissions of *nisi prius*, etc. (See ASSISE.) Consequently the judges of these Courts are justices of the peace

As to licensing justices, see LICENCE; and as to visiting justices, see PRISON. See also COMMISSION; RECORDER; STIPENDIARY MAGISTRATE.

Justicia. This word as used in the eleventh century might mean, according to the context, either a law, a judge, or a jurisdiction.

Justiciar; Justiciary. Anglicised forms of *Justiciarius*, the chief political and legal officer of the Norman and Plantagenet kings. He was *ex-officio* regent when the king went overseas, and presided over the Curia Regis (q.v.). The office ceased to exist during the reign of Henry III.

Justicias facere. Anciently this meant to hold pleas, that is to say, to exercise judicial functions.

Justicies. A writ anciently directed to the sheriff, and empowering him to hear in the old County Court (q.v.) a plea of debt for a sum exceeding the forty shillings to which his jurisdiction was ordinarily limited.

Justifiable; Justification; Justify.—I. In the law of torts and crimes, justification is where the defendant in an action or prosecution shows that the act complained of was justifiable, that is, lawful. Thus, a derogatory statement is not defamatory if it is true; an assault or battery is lawful if committed in self-defence, or in defence of one's property, or for the purpose of proper correction or discipline, etc. A defendant who sets up such a defence is said to justify. It is obvious that such a defence is inadmissible in a prosecution for an obscene, blasphemous, or seditious

libel; and even in the case of a prosecution for a defamatory libel, it is only available where it is for the public benefit that the matter complained of should be published (Libel Act, 1843, s. 6).

As to justifiable homicide, see HOMICIDE.

II. In procedure, bail or sureties for the defendant in an action were said to justify when they satisfied the plaintiff or the Court that they were sufficient, that is, that they would be able to perform their obligation if the plaintiff was successful. When bail or security was given, the sureties usually made affidavits of justification, stating that they were housekeepers or freeholders and that they were worth double the amount claimed in the action. If, however, bail were excepted to, and in certain other cases, they had to justify or attend before a judge at chambers and be examined on oath as to their sufficiency. See BAIL; EXCEPT; and Ord. 69, r. 3.

Justificators (Justificatores). The same as compurgators (q.v.).

Justitia debet esse libera, quia nihil iniquius venali justitia; plena, quia justitia non debet claudicare; et celeris, quia dilatio est quædam negatio (2 *Inst.* 56). (Justice must be unbought, because nothing is more hateful than venal justice; full, for justice ought not to be defective; and speedy, for delay is a kind of denial.)

Justitia est duplex; viz. severe puniens et vere præveniens (3 *Inst. Epil.*). (Justice is double; punishing with severity, and being really preventive.) Compare MELIOR EST, ETC.

Justitia firmatur Solium (3 *Inst.* 140). (Justice strengthens the Throne.)

Justitia nemini neganda est (*Jenk. Cent.* 178). (Justice is to be denied to no man.) This is merely an echo of Magna Carta.

Justitia non est neganda, non differenda (*Jenk. Cent.* 93). (Justice is neither to be denied nor delayed.)

Justum non est aliquem antenatum mortuum facere bastardum qui pro totâ vitâ suâ pro legitimo habetur (8 *Co.* 101). (It is not just to make an elder-born a bastard after his death, who all his life has been accounted legitimate.) This maxim applied only under the old law of *bastard eigné* and *mulier puisné*. See MULIER.

Juvenile Court. A Court of summary jurisdiction sitting for the hearing of applications for orders or licences relating to a child or young person in connection with which the child or young person has to attend, or for the hearing of a charge against a child or young person who is not charged along with an adult (Children Act, 1918, s. 111 (1)). The Juvenile Courts (Metropolis) Act, 1920, amends s. 111 of the Act of 1908 with respect to the constitution of juvenile Courts in the Metropolitan Police Court District. See IN CAMERA.

Juvenile Offenders. The Summary Jurisdiction Act, 1879, ss. 10, 11, 49 (as amended by the Summary Jurisdiction Act, 1899, s. 2), empowers a Court of summary jurisdiction to dispose summarily of anyone under sixteen who is charged with any indictable offence other than homicide, unless a trial by jury is demanded. The Criminal Justice Administration Act, 1914, s. 15 (3), also deals with such summary adjudications.

The Children Act, 1908, ss. 57 and 58, empowers the Court of summary jurisdiction to commit such offenders to reformatories (q.v.) or industrial schools (q.v.) instead of to prison.

There is no statutory definition of the expression "juvenile offender"; but the heading to Part. V. of the Children Act, 1908, read along with ss. 94-113 (which constitute Part V.) impliedly defines it as an offender under sixteen years of age.

As to criminal capacity see AGE.

Juvenile Smoking. See TOBACCO.

K

K.B.E. See BRITISH EMPIRE, ETC.
K.C.B. See BATH, ETC.
K.C.I.E. See INDIAN EMPIRE, ETC.
K.C.M.G. See ST. MICHAEL, ETC.
K.C.S.I. See STAR OF INDIA.
K.C.V.O. See ROYAL VICTORIAN, ETC.
K.P. See ST. PATRICK, ETC.
K.T. See THISTLE, ETC.

Kailes; Kayles. See CLOSH.

Kalendæ. Rural chapters of the rural clergy with the rural (q.v.) dean presiding, which were anciently held (q.v.) on the calends, that is to say, on the 1st of the month; they were also known as *Capitula ruralia*.

Kantress = Cantred (q.v.).

Karle = Carle (q.v.).

Keating's Act. The popular title of the Summary Procedure on Bills of Exchange Act, 1855. It was introduced by Mr. H. S. Keating, M.P., afterwards Mr. Justice Keating. It enabled a plaintiff suing on a bill of exchange or a promissory note to obtain speedy judgment unless the defendant obtained leave to defend. It was repealed as regards the Supreme Court by the Statute Law and Civil Procedure Act, 1883, which, however, left it in

force as regards the County Court; and it has been repealed as regards the County Court by the County Courts Act, 1919, s. 27. Both in the High Court and in the County Court a new procedure is substituted under the respective rules of Court. See TWELVE-DAY WRIT.

Keelage. The same as groundage (q.v.). The term keelage seems to have been used in connection with Hartlepool especially.

Keeper of the Great Seal. See LORD KEEPER; also PRIVY SEAL.

Keeper of the Queen's Prison. See QUEEN'S PRISON.

Keepers of the Liberty of England. See CUSTODES LIBERTATIS, ETC.

Keeping House is an act of bankruptcy (q.v.). It is confined to traders, and takes place when a debtor denies himself to a creditor who has called for payment, or withdraws into a secret part of the house, or refrains from going to his house of business, or confines himself to the house during the day, for the purpose of avoiding and thus delaying his creditors.

Kelly's (Fitzroy) Acts. The popular title of the Corrupt Practices Prevention Act, 1854, and the Legitimacy Declaration Act, 1858.

Kennelworth Edict, The. This meant the Dictum de Kenilworth (q.v.).

Kent, Customs of. See CONSUETUDINES, ETC.

Kenyon-Slaney Clause. The popular title of s. 7 (6) of the Education Act, 1902. The sub-section was inserted on the motion of Colonel Kenyon-Slaney, M.P. The Education Act, 1921, has repealed and (s. 29 (5) (c)) re-enacted it.

Compare COWPER-TEMPLE CLAUSE; CONSCIENCE CLAUSE.

Keps. Mechanism for supporting, when not in motion, the cage which goes up and down a mine shaft. See the COAL MINES ACT, 1911, s. 40 (4).

Kerhere. Stated to have meant both (1) a custom to have a cartway, and (2) a commutation for the service of carting goods for the lord.

Kernellatus. Crenellated.

Kesteven. See RIDING.

Keys, House of. The legislative assembly of the Isle of Man. See MAN.

Kidnapping. See ABDUCTION; SLAVE TRADING.

Kidnapping Act, 1872. This is the statutory short title of the statute 35 & 36 Vict., c. 19. (See s. 1.) That Act was amended and extended by the statute 38 & 39 Vict., c. 51, which (s. 1) provides that the two Acts "may be cited together as the Pacific Islanders Protection Acts, 1872 and 1875, and each of them may be cited separately as the Pacific Islanders' Protection Act of the year in which it was passed. The Short Titles Act, 1896, provides further that the short title of the Act of 1872 may be cited as the Pacific Islanders' Protection Act, 1872.

Kilderkin. A customary measure containing eighteen imperial gallons. It is not known to the law.

Killyth-stallion. Stated by Spelman to have been a custom under which the lord was bound to provide a stallion for the use of his tenants.

Kindred. This includes only such persons as are related by blood, including the half-blood.

King. See CIVIL LIST; DEMESNE; DEMISE; PARLIAMENT; PREROGATIVE.

King-at-Arms. The chief of the heralds was anciently known as the King of the Heralds. Subsequently he was entitled King-of-Arms. Upon the establishment of the Heralds' College he became Garter King-of-Arms. As to the other existing Kings-of-Arms, see HERALDS.

King's Advocate. See ADVOCATE-GENERAL.

Kings-of-Arms. See HERALDS.

King's Bench. The Court of King's Bench was one of the superior Courts of common law, having in ordinary civil actions concurrent jurisdiction with the Courts of Common Pleas and Exchequer; it was, however, considered superior to them in dignity and power, its principal judge being styled the Lord Chief Justice of England, and taking precedence over the other common law judges, and there being formerly an appeal to it from the Exchequer and the Common Pleas. It also had special jurisdiction over inferior Courts, magistrates and civil corporations by the prerogative writ of *mandamus*, and (concurrently with the two other Courts) by *prohibition* and *certiorari* (q.v.), and in proceedings by *quo warranto* and *habeas corpus*. The King's Bench was also the principal Court of criminal jurisdiction in England: informations might be filed and indictments preferred in it in the first instance, and indictments from all inferior Courts might be removed into it by *certiorari*, subject to certain limitations. See CERTIORARI; INDICTMENT; INFORMATION.

The King's Bench accordingly had two "sides" or sets of offices, namely, the "plea side," in which civil business was transacted; and the "Crown side," or "Crown Office," in which matters within the criminal and extraordinary jurisdiction of the Court were transacted. See CROWN OFFICE.

It is said to have been called the King's

Bench or Queen's Bench, both because its records ran in the name of the king (*coram rege*), and because kings in former times have often personally sat there.

By the Judicature Act, 1873, the jurisdiction of the Court of Queen's Bench, as it then was called, was transferred to the High Court of Justice. Its judges (namely, the Lord Chief Justice and the five puisne justices) originally formed a separate division of the High Court, called the Queen's Bench Division, to which was assigned all business (civil and criminal) which was formerly within the exclusive cognizance of the Court of Queen's Bench. In 1880, however, the Common Pleas and Exchequer Divisions were consolidated with it into one division called the Queen's Bench Division, which now (1923) consists of the Lord Chief Justice and seventeen justices.

See SUPREME COURT.

King's Bench Prison. A debtors' prison in Southwark, which, under the name of the Queen's Bench Prison, was replaced by the Queen's Prison (q.v.) in 1842.

King's Briefs; King's Letters. These were letters patent issued by the King out of the Chancery, and were usually addressed to the clergy and churchwardens of the Kingdom and read during the service. The direct object of the briefs was to obtain contributions from the charitable towards mitigating the severity of calamities happening to persons or places, or for raising money for purposes likely to invoke general sympathy. They were first issued after the Reformation—up to then there were only papal briefs—and they were common from the Restoration until the time of William IV. One of the latest was that issued in 1835 on behalf of the Society for the Propagation of the Gospel in Foreign Parts: but even before then the statute 4 & 5 Ann. c. 25, which had been passed in order to regulate them, had been repealed by the statute 9 Geo. 4, c. 42, s. 1. See Walford, *King's Briefs*, 1882; Bewes, *Church Briefs*, 1896.

King's Chambers are those portions of the seas, adjacent to the coasts of Great Britain, which are inclosed within headlands so as to be cut off from the open sea by imaginary straight lines drawn from one promontory to another. They appear to have always formed part of the territorial waters of the Crown. See HIGH SEAS; TERRITORIAL WATERS.

King's Coroner. This is an official quite distinct from the Coroner of the King's Household or Coroner of the Verge. See CORONER.

The King's Coroner and Attorney—to give him his full title—was formerly appointed by letters patent. He is now appointed by the Lord Chancellor. The only inquests (q.v.) with which he ever was concerned were those held upon persons dying within the now-abolished King's Bench Prison or the rules (q.v.) thereof. His further duty was to write out and extract all "amerciaments, fines, issues and forfeitures to the Crown." He now, in so far as he exists at all, is an officer of the Crown Office. The last King's Coroner who had held only that office died in 1892, and the Master of the Crown Office was thereupon appointed, without additional salary, to the office, and is now entitled the King's Coroner and Attorney and Master of the Crown Office. The office must be held by one of the Masters of the Supreme Court (King's Bench Division). See the Judicature (Officers) Act, 1879, s. 9 (2).

King's Counsel are barristers who have obtained the appointment of counsel to His Majesty by reason, as old writers put it, of their learning and talent. They wear silk gowns, sit within the bar, and take precedence in Court over "utter barristers," that is to say, the ordinary barrister, who sits outside the bar. They have no active duties to the Crown to perform, but they must not be employed in any cause against the Crown (*e.g.*, in defending a prisoner) without special licence. There used to be also King's counsel in the County Palatine of Lancaster (see the Judicature Act, 1873, s. 78), who took precedence of other barristers in the Palatine Courts. See BAR; BARRISTER; SERJEANT-AT-LAW; INNS OF COURT.

King's counsel are comparatively modern. Francis Bacon (1604) was the first; Francis North (1668) was the next: and there seem to have been but few other appointments down to about 1750. In 1775 there were only fourteen, and in 1850 only twenty-eight King's counsel, the highest intermediate number being under fifty. Now the number is over three hundred.

Down to 1831 King's counsel received an annual stipend of £40. This made it necessary for a barrister who was a member of Parliament to vacate his seat if he took silk. (See OFFICE OF PROFIT.) To meet such cases the Crown occasionally issued patents of precedence, the holders of which became of equal rank with King's counsel and ranked with them according to seniority. Such patents were issued sometimes in other cases also. One was granted in 1872 to Mr. Benjamin, a distinguished American lawyer who came to the English bar in 1866 after the collapse of the

Confederate cause. The last was that issued in 1883 to Mr. (now Lord) Phillimore.

King's counsel took precedence of serjeants (q.v.).

Colloquially, King's counsel are known as seniors and other barristers as juniors. When a barrister becomes a King's counsel he is said to "take silk."

Kingsdown's (Lord) Act. The popular title of the Wills Act, 1861.

King's Evidence. A prisoner who, instead of being put upon trial, is permitted by the Crown to give evidence against those associated with him in crime. See ACCOMPLICE; APPROVER.

King's Inns. The solitary Inn of Court in Ireland. All members of the Irish bar must before call have been members of this Inn.

King's Peace, Time [or **Days**] **of.** See NON-TERM.

King's Printer. This is the designation of the person to whom is delegated the right possessed by the Crown of publishing under authority, Acts of Parliament, Royal Proclamations, and other such public documents (see COPYRIGHT). As to the admissibility in evidence of copies of public documents purporting to be printed by the King's Printer see the Evidence Act, 1845, s. 3.

King's Proctor. The solicitor or proctor representing the Crown in the Probate, Divorce and Admiralty Division. His function, in a proper case, is to intervene (q.v.) in order to prevent a decree (q.v.) *nisi* from being made absolute; and he may do this either *quâ* King's Proctor on the ground of collusion (q.v.) or *quâ* member of the public if the decree was obtained as the result of the suppression of material facts.

King's Regulations. "The King's Regulations and Orders for the Army" are issued by the Crown, through the Army Council, for the government of the Army. Their legal force depends upon the constitutional principle that the Crown commands the Army subject to statutory regulation. See ARTICLES OF WAR.

"The King's Regulations and Admiralty Instructions" are made by Order in Council countersigned by the Lords of the Admiralty, and they, along with the Articles of War, constitute the code under which the Navy is governed.

King's Remembrancer. See REMEMBRANCERS.

King's Silver. The same as POST FINE (q.v.).

King's Widow. The widow of a tenant *in capite* of the king. Under the statute *Prerogativâ Regis* (q.v.) she could not remarry without the king's licence, and if she did, she was liable to a fine amounting generally to one year's value of her dower. The statute 32 Hen. 8, c. 46, which established the Court of Wards and Liveries, empowered the Master of the Wards (the judge of that Court) to compound with king's widows for fines due in respect of their having re-married without licence (see s. 25).

Kipper-time. The season during which salmon are breeding and unfit for human food. The Rot. Parl., 50 Edw. 3, provided: "*Qe nul salmon soit prise en Tamise entre Graveshend et le pount de Henlee sur Tamise en temps q'il soit kiper: C'est assavoir entre les Festes de l'Invention del Crois et le Epiphanie.*" (That no salmon be taken in the Thames between Gravesend and the bridge of Henley-on-Thames at the season when it is kipper, that is to say, between the Feasts of the Invention of the Cross [3rd May] and the Epiphany [6th January])—which shows that the Thames was a very early river. No English river is now open, even for rods, before 31st January.

Kirkby's Quest. A record similar to the Testa de Nevill (q.v.). It was made out in 1275 by order of John Kirkby, treasurer to Edward I. The original has disappeared: a transcript, which is attributed to the 16th century, still exists amongst the Records of the Exchequer in the Public Record Office.

Knacker. "A person whose trade or business it is to kill any cattle not killed for the purpose of being used as butchers meat" (Protection of Animals Act, 1911, s. 15 (*e*)). "'Cattle' includes any horse, ass, mule, bull, sheep, goat or pig" (*ib.*).

No knacker's yard can be established anew in the metropolis since 31st December, 1891, without the consent of the county council (Public Health (London) Act, 1891, s. 20), and every knacker's yard must have an annual licence from the county council (*ib.* s. 19). Outside the metropolis, knackers are licensed annually by the district councils (Local Government Act, 1894, s. 27).

No one licensed as a knacker can be a horse-dealer while so licensed (Protection of Animals Act, 1911, s. 6). Every knacker must observe the conditions set out in the First Schedule to the Protection of Animals Act, 1911 (*ib.* s. 5), which repealed *inter alia* the Knackers Acts, 1786 and 1844.

Knight. The dignity of knighthood ordinarily denotes that of a knight bachelor, which is the lowest title of dignity in this kingdom.

(See DIGNITY.) There are other kinds of knights, such as Knights of the Garter (q.v.) and of the Bath (q.v.), who are of higher degree.

A knight bachelor is created by the Sovereign, or someone acting under his commission, touching the proposed recipient of the honour with a sword on the shoulder while kneeling, and saying, "Rise, Sir Thomas Jones," or as the case may be.

Anciently fees were payable on knighthood, and, in order to raise money, Charles I. called upon the owners of land to the annual value of £40 to accept knighthood; but the statute 16 Car. 1, c. 20, put an end to compulsory knighthood. See LIBRATA TERRAE.

"Knights of the shire" was down to about 1885 the technical name for those members of Parliament who represented the counties, as opposed to the citizens and burgesses, or borough members, who represented the towns. See BANNERET; BAS CHEVALIER; WINDSOR, KNIGHTS OF.

Knightencourt. An "honor" court anciently held twice yearly by the Bishops of Hereford. Those bound to attend were the lords of manors forming the honor of that bishopric and those holding of them by knight service: such of them as failed to attend paid two shillings as suit-silver for respite of homage.

Knight Harbinger. An officer (abolished in 1846) of the king's household who, when the king travelled, rode a day's journey in advance to arrange for the king's lodging.

Knighthood, Orders of. See BATH; BRITISH EMPIRE; GARTER; GUELPHS-HANOVER; INDIAN EMPIRE; ROYAL VICTORIAN; ST. MICHAEL AND ST. GEORGE; ST. PATRICK; STAR OF INDIA; THISTLE.

As to ORDERS OTHER THAN OF KNIGHTHOOD, see that title.

Knight Marshal. An officer of the Court of the Marshalsea (q.v.).

Knight of the Post. A colloquial term which formerly meant one, such as a notorious perjurer, who was worthy of the whipping-post. See HOCKETTOR.

Knight's Fee. See FEE.

Knights of Grace; Knights of Justice. See ST. JOHN; ETC.

Knights of the Carpet. The same as Knights of the Chamber (q.v.).

Knights of the Chamber. In the fourteenth century this was a description applied to knights upon whom the honour had been conferred elsewhere than on the field of battle. See BANNERET.

Knights of the Green Cloth. The same as Knights of the Chamber (q.v.).

Knight's Service. Tenure by knight's service was where a man held land of another person or of the Crown by military service, of which the principal varieties were escuage, grand serjeanty, castleward and cornage (q.v.).

Knight's service had five incidents, namely, aids, relief, wardship, marriage and escheat; the king's tenants *in capite ut de coronâ* were further liable to primer seisin and fines for alienation. See the various titles: also OUSTERLEMAIN; FEALTY; HOMAGE; TENURE; SERVICE.

Tenure by knight's service was converted into common socage by the statute 12 Car. 2, c. 24.

"Knock Out." This term is applied to an arrangement between persons about to attend an auction to the effect that only one of them shall bid for any given article, and that after the auction there shall be a private sale amongst themselves of the articles which each of them has bought. This, of course means that only part of the competitive price goes to the original vendor; but the arrangement does not appear to be illegal.

L

Label. A slip of parchment or other material attached to a deed in order that a seal may be affixed to the slip.

Laborariis, De. Under the Statute of Labourers (q.v.) there were two forms of this writ:—One against a man having no apparent means of livelihood who refused to take employment, and the other against a man who refused to serve for the summer with a master living in the town where he had served during the winter. In each case the erring labourer was to be committed to gaol until he had seen the error of his ways.

See SUPER STATUTO VERSUS SERVANTES.

Labour Bureau. The Labour Bureaux (London) Act, 1902, which relates only to London, authorises the council of any metropolitan borough to establish a labour bureau, that is to say, "an office or place used for the purpose of supplying information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople and workpeople who seek engagement or employment.

This Act has never been repealed: but it would appear to be practically superseded by

the Labour Exchanges Act, 1909. See LABOUR EXCHANGES.

Labourer. It has been judicially decided that a parish clerk or a bailiff or a carpenter is not a labourer and that a labourer is a man who digs and does work of that kind with his hands. But a farmer who does manual work on his own farm is not a labourer within the meaning of the Sunday Observance Act, 1677, 29 Car. 12, c. 7, s. 1, which, however, is so worded that it is not clear whether even an agricultural labourer comes within it.

Labourers, Statute of. This was the statute 23 Edw. 3, passed in 1349 after about half the population had died of the Black Death. It recited that many of the people had died of the Pestilence and that many, " seeing the necessity of masters and great scarcity of servants, will not serve unless they may receive excessive wages and some [be] rather willing to beg in idleness than by labour to get their living," and enacted that everyone under sixty, except traders, craftsmen, those with private means and landowners, should work for anyone willing to employ them at the wages paid from 1340 to 1346. It was repealed by the Statute Law Revision Act, 1863. See SUPER STATUTO VERSUS SERVANTES, ETC.

Labour Exchange. The Labour Exchanges Act, 1909, ss. 1, 2, was passed to establish and take over labour exchanges, and by s. 5 defines ' labour exchanges ' as meaning " any office or other place used for the purpose of collecting and furnishing information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople and workpeople who seek engagement or employment." The establishment of labour exchanges had been authorised by the Unemployed Workmen Act, 1905, ss. 1 (4), 2 (3), and they had previously existed as the result of private action.

" Labouring Classes." This expression is declared by the Metropolitan Police Act, 1886, s 5 (7) to include " mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income does not exceed an average of 30*s*. a week, and the families of any such persons who may be residing with them." Compare WORKING CLASSES.

Labour, Ministry of. The Ministry of Labour was established pursuant to s. 1 of the New Ministries and Secretaries Act, 1916. By s. 2 of that Act there were transferred to this new ministry the powers and duties of the Board of Trade under the Conciliation Act, 1896 (see CONCILIATION), the Labour Exchanges Act, 1909 (see LABOUR EXCHANGE), the Trade Boards Act, 1909 (see MINIMUM WAGE), and the National Insurance (Unemployment) Acts, 1911 to 1916 (see NATIONAL INSURANCE). The head of the ministry is styled the Minister of Labour and has a salary of £2,000 a year (s. 10): he can sit in the House of Commons (s. 12 (1)), and he has, up to the present, always been a member of the Cabinet (q.v.). See OFFICE OF PROFIT.

Laches is negligence or unreasonable delay in asserting or enforcing a right. In the old book the term is chiefly used with reference to rights of entry. Thus, while the doctrine of " descent cast " (q.v.) was in force, if an infant was disseised of land, and the disseisor died in possession, the infant was not deprived of his right of entry, as a person of full age would have been, because no laches could be imputed to an infant in such a case. See DISABILITY; also INTRUSION, as to laches by the Crown.

At the present day " laches " is generally used to denote unreasonable delay in enforcing an equitable right. Thus if a person discovers that he has been induced by fraud to enter into an instrument, and then waits an unnecessary time before taking proceedings to set it aside, this laches will disentitle him to relief. He is, however, entitled to a reasonable time for the purpose of making inquiries, and obtaining advice, etc. Where an equitable right of action is analogous to a legal right of action, and there is a Statute of Limitations fixing a limit of time for bringing actions at law to enforce such claims, the Court will by analogy apply the same limit of time to proceedings taken to enforce the equitable right. See ACQUIESCENCE.

Lada. This is stated to have meant (1) a Court of justice, (2) a trial, (3) a watercourse, and (4) a lathe (q.v.), with different derivations in each case.

Lady. The recognised courtesy title of the daughters of dukes, marquises, and earls (as, *e.g.*, [the] Lady Jane Sheepshanks) and of the wife of anyone entitled to the courtesy title of lord (as, *e.g.*, [the] Lady George Gaunt). It is the customary title of the wife of a knight or of a baronet (as [the] Lady Warrington); but the formal title of those ladies is, for instance, Dame Theodora Warrington: and, except formally, a

marchioness, viscountess, or baroness is always spoken of or to as, for instance, Lady Farintosh instead of as the Marchioness of Farintosh.

Lady Day. The 25th March. See ANNUNCIATION, FEAST OF; OLD LADY DAY.

Lady of Grace; Lady of Justice. See ST. JOHN, ETC.

Laen-land. In the late Anglo-Saxon period this, as distinguished from bocland and folkland (q.v.)—both of which were held, but on different titles, from the king—meant land held of a superior other than the king. It thus corresponded more or less to land which, after the Norman Conquest, was held of, not by, a tenant, *in capite*.

Læsæ majestatis, Crimen. The crime of treason or, literally, "The crime of injured majesty." The expression is used by Glanville. There is no modern equivalent in our law, although *lèse-majesté*, the French translation of the Latin expression, is well known in continental law: but *lèse-majesté* includes many offences against the Sovereign, such as mere insult, which are of much less gravity than treason.

Læsio fidei. (A breach of faith.) The ecclesiastical Courts down to the middle of the fifteenth century claimed that in matters such as non-payment of debt and breach of contract they had a general jurisdiction, inasmuch as a *læsio fidei* came into question. The growth of the equitable jurisdiction of the Chancellor, and the steady resistance of the judges generally, eventually put an end to this claim.

Lætare Jerusalem. The more correct form of LETARE JERUSALEM (q.v.).)

Læthe = Lathe (q.v.).

Lagan. See JETSAM.

Lage; Laga. The Saxon for "law," and a Latinised form. We find the word in compound forms such as Danelage.

Lagen. An ancient measure of wine, stated to have contained seven quarts.

Lairwite. A penalty for adultery or fornication (q.v.), more especially with an unfree woman. See Leg. Hen. 1, par. 23, and 4 Inst. 206.

Lambarde, William. Born 1536, admitted to Lincoln's Inn in 1556, appointed a bencher of the Inn in 1578, became a master in Chancery in 1592, and died in 1601. He published in 1568 his *Archaionomia*, a paraphrase of the Anglo-Saxon laws and of the laws of William the Conqueror; and in 1581 he published his *Eirenarcha; or of the Office of Justices of the Peace*, which was for long the standard work on the subject.

Lambeth Degrees. Degrees conferred by the Archbishop of Canterbury, by virtue of the statute 25 Hen. 8, c. 21, ss. 2, 3. He has authority to confer all the usual degrees in Arts, Divinity, Law and Medicine, with or without examination, upon either laymen or clergymen. Recipients of such degrees may wear the academic costume of the university to which the archbishop who grants them may belong. A Lambeth degree in medicine does not, if granted after 30th June, 1858, entitle the holder to be registered as a medical practitioner (Medical Act, 1858, s. 15, Sch. (A) (10)) and the holder of such a degree who uses it for the purpose of implying that he is duly registered or that he is recognised by law as a physician commits an offence punishable upon summary conviction (*ib.* s. 40).

Degrees in divinity are those usually conferred by the archbishop: and such a degree is most usually given in the case of a bishop or other high dignitary who happens not to have obtained the corresponding degree at one of the universities.

Lammas. The 1st August. The word literally means "loaf-mass," being derived from the Anglo-Saxon *hlaf* (a loaf) and *mæssc* (mass). In Anglo-Saxon times a loaf was ceremonially offered in the churches on 1st August. · Old Lammas Day is the 12th August, which corresponds to the 1st August of the time before the calendar was reformed.

Lammas Lands are open arable and meadow lands, which are held by a number of owners in severalty during a portion of the year, and which after the severalty crop has been removed are commonable not only to the owners in severalty but to other classes of commoners, *e.g.*, inhabitants of the parish, tenants and inhabitants of a manor, freemen or householders of a borough, or the owners or occupiers of ancient tenements within the parish, usually termed tofts. They derive their name from the former practice of keeping them open from Lammas Day to Lady Day next ensuing. The date of opening them is now August 12. See COMMON.

Lancaster. See DUCHY OF LANCASTER; HERALDS.

Land.—I. In its technical sense, as a word of description in conveyancing, pleading, etc., land, says Coke, "comprehendeth any ground, soile, or earth whatsoever: as meadowes, pastures, woods, moores, waters, marishes, furses and heath. It legally includeth also all castles, houses and other buildings: for

castles, houses, etc., consist upon two things, viz., land or ground, as the foundation, and [the] structure thereupon, so as passing the land or ground, the structure or building thereupon passeth therewith. Also . . . waters . . . are not by that name demandable in a *præcipe* [that is, an action for the recovery of land]; but the land whereupon the water floweth or standeth is demandable; as for example, *viginti acras terræ aquâ coopertas* [twenty acres of land covered with water]. And lastly the earth hath in law a great extent upwards, not only of water, as hath been said, but of ayre [air] and all other things even up to heaven, for *cujus est solum ejus est usque ad cœlum.*"

Land is divisible both horizontally (see CLOSE) and vertically. Therefore one man may be entitled to the surface of land, and another to the minerals under it (see (EASEMENT); or one man may have a fee simple in one story of a house, while the rest may belong to another.

Land is a tenement and a hereditament, and, therefore, belongs to the class of real property. See HEREDITAMENT; TENEMENT; REAL PROPERTY.

Rights in respect of land are of two kinds—(i) rights of ownership, although theoretically land is not the subject of ownership according to English law (see ESTATE; TENURE); and (ii) rights *in alieno solo*, which include easements and profits (q.v.).

II. In the old books, and in fines and the like, the word "land" strictly signified nothing but arable land; the reason given being that arable land was considered more beneficial to the country than pasture.

III. "In every Act passed after the year 1850 . . . the expression land shall include messuages, tenements and hereditaments, houses and buildings of any tenure . . . unless the contrary intention appears" (Interpretation Act, 1889, s. 3). The contrary intention appears in, for instance, the Mortmain and Charitable Uses Act, 1891, s. 3 whereof enacts that "Land in the Mortmain and Charitable Uses Act, 1888, and in this Act shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land."

See ACCUMULATION; EJECTMENT; LANDLORD AND TENANT; POSSESSION; SEISIN; VENDORS AND PURCHASERS.

Land Certificate. See CERTIFICATE.

Land Charge. The Land Charges Registration and Searches Act, 1888, s. 4, defines land charge as meaning in that Act "a rent or annuity or principal moneys payable by instalments, with or without interest, charged, otherwise than by deed, upon land, under the provisions of any Act of Parliament, for securing to any person either the moneys spent by him or the costs, charges and expenses incurred by him under such Act, or the moneys advanced by him for repaying the moneys spent or the costs, charges and expenses incurred by another person under the authority of an Act of Parliament, and a charge under the 35th section of the Land Drainage Act, 1861, or under the 29th section of the Agricultural Holdings (England) Act, 1883," for which latter enactment is now substituted s. 15 (as extended by the Agriculture Act, 1920, s. 22, Sch. I) of the Agricultural Holdings Act, 1908. (See s. 19 of the Act of 1908.) S. 12 of the Act of 1888 provides for the registration of such charges. See IMPROVEMENT OF LAND; DRAINAGE; CHARGE.

The Land Charges Act, 1900, removed to the Land Charges Department of the Land Registry the register of land charges which previously had been kept in the Central Office.

The Acts of 1888 and 1900 deal not only with land charges properly so-called, but also with writs, orders, deeds of arrangement, *lis pendens*, annuities and executions, none of which can now affect land unless registered under the Acts.

Land-cheap. A customary fine paid in some manors on the alienation of copyholds.

Land Commissioners. See COPYHOLD COMMISSIONERS.

Landegandman. Anciently this meant a copyholder.

Land Gabel. Anciently a tax or rent issuing out of land. According to Spelman, the land gabel mentioned in Domesday was at the rate of a penny a year for each house.

Landirecta. This meant the *Trinoda necessitas* (q.v.).

Landlocked is an expression sometimes applied to a piece of land belonging to one person and surrounded by land belonging to other persons, so that it cannot be approached except over their land. See EASEMENT.

Landlord and Tenant. The relation of landlord and tenant is created by one person (the landlord) allowing another (the tenant) to occupy the landlord's house or land for a consideration termed rent, recoverable by distress.

In the absence of express agreement, the landlord impliedly contracts with the tenant to give him possession and guarantee him against

eviction by any person having a title paramount to that of the landlord. On the other hand, the tenant impliedly contracts with the landlord to pay the rent, not to commit waste, and (subject to his right to compensation for disturbance, where such right exists — see AGRICULTURAL HOLDINGS) to give up possession at the end of the tenancy.

Usually, however, the tenancy is regulated by the terms of a document called a lease (q.v.).

See DISTRESS; FIXTURES; NOTICE TO QUIT; RENT; TERM.

Land-man. A terre-tenant (Blount).

Land Registries, or registries for officially recording the title to, dealings with and charges on land are managed on two principles, namely, as registries of title and registries of assurances. A registry of title is an authentic and self-explanatory record of the state of the title to the land registered on it; that is to say, a piece of land appears on the register as belonging to A B, and if it is subject to a mortgage or charge in favour of C D, that also would appear. A registry of assurances or deeds, on the other hand, merely contains a statement of the existence of documents or assurances affecting the title to the land, by giving either a transcript or an epitome of each document (see MEMORIAL; MIDDLESEX), leaving the persons concerned to draw their own conclusions as to the effect of those documents on the title to the land.

As regards the district over which they extend, registries are of two kinds, general and local.

A general Land Registry for England and Wales was established by the Land Registry Act, 1862 ("Lord Westbury's Act"); but owing to the fact that it imposed on persons desirous of making use of it the necessity of showing a marketable title to, and defining the boundaries of, the land to be registered (both expensive and tedious, and in many cases impossible, processes), the Act was practically a failure, and (Land Transfer Act, 1875, s. 125) is no longer in operation, except as to land already registered under it. The next Act regulating the general registration of land was the Land Transfer Act, 1875, which created an office of Land Registry in London, consisting of a registrar, assistant registrar, etc., and (supplemented by the General Rules made under it) provides—(1) for the voluntary registration in six manners of existing titles to freehold land, and also leasehold land held on terms of a certain length (but not copyholds or customary freeholds); also of incorporeal hereditaments of freehold tenure, mines, fee farm grants, etc.; (2) for the transfer of registered land (see TRANSFER); (3) for the creation and transfer of charges on registered land (see CHARGE); (4) for the registration of titles, rights and interests to or in registered land acquired in consequence of the death, marriage, bankruptcy, etc., of a registered proprietor; (5) for the registration of notices as to the existence of leases and estates in dower or by the curtesy; and (6) for the protection of rights arising from unregistered dealings with registered land (see CAUTION; RESTRICTION). This Act also was a practical failure down to 1897, when Lord Halsbury procured the passage of the Land Transfer Act, 1897, which by s. 20 (1) enacts that registration of title to land may by Order in Council be made compulsory in any specified area and that within any such area no person can upon a sale acquire the legal estate in any freehold land unless upon such sale he is registered as proprietor of the land. Such Order in Council has been made in respect of the administrative county of London, which includes the City. Except within that area, the Act of 1875 is but little availed of.

Local land registries are for the registration of land within defined districts. By the Land Transfer Act, 1875, s. 118, power is given to the Lord Chancellor to create district registries for the registration (under the Act) of land within defined districts. No such district registries have been created, but local land registries, on the principle of registration of assurances, have existed in Middlesex and in each of the three ridings of Yorkshire for the last two hundred years, and in the Bedford Level (q.v.) since the reign of Charles II. As soon as land in any of these districts is registered in the general Land Registry, it becomes exempt from the jurisdiction of the local registry (Land Transfer Act, 1875, s. 127).

See TORRENS' SYSTEM; YORKSHIRE.

Lands Clauses Acts. This, before the enactment of the Interpretation Act, 1889, was the popular title, and since then (see s. 23) it has been, as regards England and Wales, the official title of the Lands Clauses Consolidation) Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same. The Lands Clauses (Taxation of Costs) Act, 1895, is the only such additional Act.

These Acts, which are to be read as one,

form a code under which land can be compulsorily acquired for public or *quasi*-public purposes, but only by way of the incorporation of the Acts with a special Act passed for a particular purpose. Such a special Act may be one for (1) the acquisition of land for purposes of national defence or official purposes; (2) the acquisition of land for local or municipal purposes by public bodies; or (3) the acquisition of land for commercial purposes of public utility by private persons or private corporations. As to the payment of purchase moneys into Court where owners of land for various reasons cannot convey, see ss. 69, 71, 72 of the Act of 1845.

Land Societies. See FREEHOLD LAND SOCIETIES, which mean the same thing.

Lands, Tenements and Hereditaments. This is the most comprehensive description of real property, as " goods and chattels " is of personalty. See HEREDITAMENT; LAND; TENEMENT.

Land Tax is a tax payable annually in respect of the beneficial ownership of land. The tax applies to land generally, with some exceptions, the most important of which are certain educational and charitable institutions enumerated in s. 25 of the Land Tax Act, 1797. If land subject to the tax is in lease, the tenant is primarily liable to pay the whole tax, but he is entitled (unless he has expressly agreed to pay it himself) to deduct from the rent so much of the tax as the landlord ought to bear in respect of the rent, so that if the rent is a rack-rent the landlord bears the whole tax. The tax was originally in 1692 levied under the statute 4 Will. and Mary, c. 1, at so much in the pound, but was afterwards imposed in 1698, under the statute 9 Will. 3, c. 10, in fixed amounts on the various counties, boroughs, cities, towns and liberties in England. From then down to 1797 the collection of the tax was authorised by a similar Act passed each year. In 1798 it was made perpetual by the Land Tax Perpetuation Act, 1798. The amounts payable by each county, borough, etc., were distributed or assessed at so much in the pound on the lands, tenements and hereditaments in each county, borough, etc., by commissioners under the Land Tax Act, 1797. The maximum rate of the tax was 4s. in the £1 under the Land Tax Redemption Act, 1802, ss. 180, 181, but this was reduced to 1s. in the £1 by the Finance Act, 1896, s. 31. The land tax was first made redeemable by the Land Tax Perpetuation Act, 1798; and under that and subsequent statutes about one-half of the whole amount of the tax has been redeemed.

No land tax is payable by an owner if his income does not exceed £160, and tax at only half rate is payable if his income is under £400 (Finance Act, 1898, s. 12; Finance (No. 2) Act, 1915, s. 21 (5); Finance Act, 1920, s. 63).

Land Tax Commission. This consists of (1) a number of persons appointed from time to time by various statutes which enact that the persons named in schedules deposited with the Clerk of the House of Commons shall be Land Tax Commissioners, and (2) of justices of the peace as regards the areas for which they hold the commission of the peace. The latest of such statutes is the Land Tax Commissioners Act, 1906.

These Commissioners, two of whom are a *quorum* (Taxes Management Act, 1880, ss. 21, 35), have power to decide without appeal all questions as to the assessment and collection of land tax (Land Tax Act, 1797, s. 23).

Land Tenants. Used in the English version of the statute 14 Edw. 3, st. 1, c. 3, as the equivalent of *terres tenantz*. See TERRE TENANT.

Land Transfer Acts. See LAND REGISTRIES; EXECUTOR.

Land Values Duties. These were duties imposed by the Finance (1909-10) Act, 1910, Pt. I., which comprises ss. 1-42 of that Act. They were (1) increment value duty; (2) reversion duty; (3) undeveloped land, and (4) mineral rights duty (q.v.). All that need be said of them here is that they all, except mineral rights duty, gave more trouble to collect than they were worth; and the Finance Act, 1920, s. 57, provided that as from the commencement of that Act none of them, except mineral rights duty, should be payable.

Land Waiter. An obsolete designation of a customs officer who enforced upon land the payment of customs duties upon goods before export and after import. The Tidewaiter (q.v.) boarded ships for the same purpose.

Langdale's (Lord) Act. A former popular title of the Wills Act, 1837.

Langemanni. Used in Domesday to mean, according to Coke (1 *Inst.* 5), lords of manors.

Languidus. See DUCES TECUM LICET LANGUIDUS.

Lanis de crescentia Walliæ traducendis absque custuma. Anciently this was a writ connected with the trade in wool.

Lano niger. In the reign of Edward I. this appears to have been the name of a species of base coin.

Lapis marmorius. A large marble slab in Westminster Hall on which the king's chair was formerly placed at the coronation banquet.

Lapse. As a general rule, when a person to whom property has been devised or bequeathed dies before the testator, the devise or bequest fails or lapses, and the property goes as if the gift had not been made;—consequently, if a testator bequeaths £100 to A (or to A "his executors or administrators") and the residue of his property to B, then, if A dies during the lifetime of the testator, the legacy lapses and falls into the residue, that is, it goes to B on the testator's death. There are, however, some exceptions to this rule. Thus if property is given to several persons as joint tenants, on the death of one of them during the lifetime of the testator the whole goes to the survivors. And if land is given to a person in tail who dies before the testator, leaving issue capable of taking under the entail, the land goes as if the devisee had died immediately after the testator (Wills Act, 1837, s. 32). And if a testator bequeaths (or devises) property to a child or other descendant of himself, and such descendant dies leaving issue who survive the testator, the legacy (or devise) does not lapse but takes effect as if the person to whom the gift was made had died immediately after the testator (*ib.* s. 33).

In ecclesiastical law, a lapse occurs when a benefice becomes void and the patron neglects to present within six months after the avoidance. In such a case the patronage devolves from the patron to the bishop (see COLLATION) and on the neglect of the bishop to the metropolitan, and on the neglect of the latter to the Crown. In criminal proceedings, "lapse" is used in the same sense as "abate" in civil procedure, that is to say, it means that the proceedings come to an end from the death of the accused or some other event. The death of the complainant or prosecutor does not cause a lapse. See ABATEMENT OF CRIMINAL PROCEEDINGS.

Larceny in the common law was the wrongful or fraudulent taking and carrying away, without colour of right, of the personal goods of another from any place, with a felonious intent to convert them to his (the taker's) own use, and make them his own property, without the consent of the owner.

The Larceny Act, 1861, repealed, amended, and re-enacted all the pre-existing enactments as to larceny and cognate offences. It has been to a large extent repealed and replaced by the Larceny Act, 1916. The two Acts now form a complete code on the subject.

Stealing, for which no special punishment is provided by the Larceny Act, 1916, or any other Act, is simple larceny (Larceny Act, 1916, s. 2).

Formerly larceny was distinguished as grand or petty, according as the value of the property did or did not exceed twelve pence. This was abolished by the Larceny Act, 1861, s. 2.

See ANIMALS FERÆ NATURÆ; EMBEZZLEMENT; BURGLARY; FALSE PRETENCES; HOUSE BREAKING; MISAPPROPRIATION.

Larding Money. This was a small customary annual payment made by the tenants of the Manor of Bradford, in Wiltshire.

Last. See DAKIR.

Lastage. This seems to have meant, amongst other things, a toll payable by traders attending fairs and markets.

In London it was one of the metage (q.v.) dues.

Last Court. An obsolete administrative assembly in the Cinque Ports constituted of the bailiffs (q.v.) and jurats (q.v.).

Last Day of Term. Before the abolition of terms (q.v.) it was the custom of the common law courts on the last day of each term that the junior bar should move its motions first, and that they should begin with the barrister junior in point of standing and end with the senior. The inner bar then moved, but in order of seniority.

Last Heir. He to whom land came for want of heirs, whether the king or the lord, was formerly known as the last heir. See ESCHEAT.

Lata culpa dolo æquiparatur. (Gross negligence is equivalent to fraud.) "But," said Lord Esher in *Le Lievre* v. *Gould* (1893), 1 Q.B. 491, "negligence, however great, does not of itself constitute fraud," that is to say in our law. The maxim applies only in the civil law.

Latent. See AMBIGUITY.

Lathe is a division or district of a county, consisting of three or four hundreds. They only occur in Kent under this name; but they also occur in Sussex under the name of rapes. See COUNTY; HUNDRED. A law Latin form was *lada*.

Latimer. Used by Coke (2 *Inst.* 515) as meaning an interpreter. Camden suggests, and Murray agrees, that it may be a corruption of latiner, that is, one who knew Latin.

Latin. See FALSE LATIN; FRENCH.

Latinarius. Used in Domesday as meaning one able to translate Latin.

Latin Information. See ENGLISH INFORMATION.

Latitat. See BILL OF MIDDLESEX.

Latro; Latrocinium. These words generally meant respectively a robber (*latro*) and *latrocinium* (robbery): but in Leg. W. 1 *latro* is used a meaning one having exclusive local jurisdiction in cases of robbery and in a charter of Hen. I. *latrocinium* is used in the same sense.

Laudibus legum Angliæ, De. See FORTESCUE.

Laughe. Used by Reeves (1787), Vol. 2, p. 17, as meaning frank-pledge; but his authority for this use of the word is not clear. The word appears to be merely a variant of law.

Laureate. See POET LAUREATE.

Laurel; Laureate. A popular name of the unite (see GOLD COINS) which represented the king's head as having a laurel wreath round it.

Law is used in two principal senses, the idea common to both of them being uniformity of action. In one sense the name "law" is merely the expression for a uniformity of action which has been observed: as when we speak of the laws of gravitation, or say that crystals are formed according to certain laws: here the law follows from the uniformity. In the other sense, the law produces the uniformity, that is, the law is a rule of action. To this latter class belong the Law of Nature (using that term in the sense of rules imposed, as Blackstone puts it, on man by his Maker) and laws of human origin. Human laws again are either (i) social (such as the so-called laws of honour, morality, etc.), or (ii) political, the latter being divisible into (a) international law, and (b) positive law, that is to say, law capable of judicial enforcement, or law in the technical sense of the word. As to international law, see that title.

Law, as the subject of jurisprudence, is used in three senses.

I. In its widest sense, law is an aggregate of rules enforcible by judicial means in a given country; thus, we speak of the law of England as opposed to the law of France or the Roman law. This kind of law is called territorial or municipal law to distinguish it from international law and is of the following kinds—

A. With reference to its origin, law is derived either from judicial precedents, from legislation or from custom. That part of the law of England which is derived from judicial precedents is called common law, equity, or admiralty, probate or ecclesiastical law, according to the nature of the Courts by which it was originally enforced (see the respective titles). That part of the law which is derived from legislation is called the statute law: many statutes are classed under one of the divisions above mentioned, because they have merely modified or extended portions of it, while others have created altogether new rules. That part of the law which is derived from custom is sometimes called the customary law, as to which see CUSTOM.

The ordinary, but not very useful, division of law into written and unwritten, rests on the same principle. The written law is the statute law, the unwritten law is the common law (q.v.).

B. With reference to its subject-matter, law is either public or private. Public law is that part of the law which deals with the State, either by itself or in its relations with individuals, and is called (1) constitutional, when it regulates the relations between the various divisions of the sovereign power; and (2) administrative, when it regulates the business which the State has to do; the most important branches of the latter class are (a) the criminal law and the law for the prevention of crimes; (b) the law relating to education, public health, the poor, etc.; (c) ecclesiastical law; and (d) the law of judicial procedure (courts of law, evidence, etc.).

Private or civil law deals with those relations between individuals with which the State is not directly concerned: as in the relations between husband and wife, parent and child, and the various kinds of property, contracts, torts, trusts, legacies, the rights recognised by the rules of Admiralty law, etc. (See COMMON LAW; EQUITY; ADMIRALTY ACTION; ADMIRAL.) Even here, however, the Courts take cognizance, to a certain extent, of the indirect effects of private conduct on the community in general; they accordingly refuse to sanction contracts which are immoral, or in restraint of trade or marriage, or are otherwise against public policy. See PUBLIC POLICY.

C. Law is also divided by the Benthamite school into substantive and adjective. Substantive law is that part of the law which creates rights and obligations, while adjective law provides a method of enforcing and protecting them. In other words, adjective law is the law of procedure.

II. In a narrower sense, "law" signifies a rule of law, especially one of statutory origin; and hence,

III. In its narrowest sense, "law" is

equivalent to "statute"; as when we speak of the Poor Laws, the Corn Laws, etc.

As to the distinction between law and fact, see FACT. See also RESPONDEAT OUSTER.

Law Christian. Anciently this meant the ecclesiastical law as distinguished from the common law.

Law-day. A day on which Courts, more especially the old Courts of the shire and the hundred, were held; hence used for the sitting of such a Court or for the Court itself.

Lawful Day. A day on which legal business may be done. Compare DIES NON.

Lawful Heirs; Lawful Issue; Heirs Lawfully Begotten. In these expressions the words "lawful" or "lawfully begotten" are mere redundances and do not affect the meaning of the words "heir" or "issue" (q.v.).

Lawing of Dogs. Expeditation (q.v.).

Lawless Court. A manor Court anciently held on Kingshill, at Rochford, in Essex, at cockcrow on the morning of the Wednesday next following Michaelmas Day. It belonged to the honor (q.v.) of Raleigh.

Lawless Man. The same as *ex lex* (q.v.).

Law List. The annual publication known as the *Law List* purports to be published, so far as relates to the solicitors and the conveyancer (not at the bar) whose names appear therein, under the authority (see the title page) of the Commissioners of Inland Revenue. The Solicitors Act, 1860, s. 22, makes the list *primâ facie* evidence that any solicitor or conveyancer whose name appears therein holds the prescribed certificate for the current year and that any solicitor or conveyancer whose name does not appear therein does not hold such certificate.

Law Merchant. See CUSTOM.

Law Officers of the Crown. These, more generally described as the Law Officers, are the Attorney-General (q.v.) and the Solicitor-General (q.v.). Down to 1872 the Advocate-General (q.v.) was also included in the expression. The use of the expression is in general merely colloquial: but for the purposes of the Patents and Designs Act, 1907, the term "law officer" is expressly declared to mean the Attorney-General or Solicitor-General (*ib.* s. 93).

Law of Nations is the old-fashioned equivalent for "International Law," or, more strictly, "Public International Law"(q.v.). It is a literal translation of the Latin phrase *jus gentium*, which, however, did not mean the law governing the conduct of States in their relations with one another, but those rules of law which are common to all civilised nations: "*vocaturque jus gentium, quasi quo jure omnes gentes utuntur*," says Justinian.

Law of Nature. See LAW.

Law Reports. See REPORT.

Law Society. In or before the year 1739, the "Society of Gentlemen Practisers in the Courts of Law and Equity" was formed, and in 1819 another society, called the "Metropolitan Law Society," came into existence, the object of both societies being the prevention of abuses amongst solicitors, attorneys and proctors. In 1825 a society, known as the "Law Society," was formed. This latter society received a charter of incorporation in 1831; it was thenceforth known as the Incorporated Law Society; and the societies which had preceded it became defunct. The Incorporated Law Society received in 1845 a further royal charter, in which it is referred to as "The Society of Attorneys, Solicitors and Proctors, and others, not being barristers, practising in the Courts of Law and Equity of the United Kingdom." Under the Solicitors Act, 1843, s. 2, the Society was made registrar of attorneys and solicitors: the custody of the roll of solicitors, which previously had been with the Clerk of the Petty Bag (q.v.), was transferred to it by the Solicitors Act, 1888, s. 5. Since 1877 no person can be admitted as a solicitor unless he has obtained from the Society a certificate that he has passed certain examinations (Solicitors Act, 1877, s. 5): it issues the annual certificate without which a solicitor cannot practise (Solicitors Act, 1843, ss. 21, 26). Under the Solicitors Act, 1888, s. 13, the committee of the Society investigated complaints against solicitors, and in a suitable case brought the matter before the Court in order to have the solicitor struck off the roll; and now, under the Solicitors Act, 1919, s. 5, the committee, in addition to investigating, can itself strike off the roll, the offender being, however, given by s. 8 a right of appeal to the Court.

The charters already referred to were supplemented by others granted in 1872, 1903 and 1909. In the charter of 1903 the Society is described as the Law Society: that is now its official description and is used in the Solicitors Acts, 1919 and 1922.

Lay Days (or laying days), in the law of merchant shipping, are the days which are allowed by a charter-party for loading and unloading the ship. If the vessel is detained beyond the period allowed, demurrage (q.v.) becomes payable. See CHARTER-PARTY.

Lay-fee. Lands held in fee of a lay lord, and subject to the ordinary services, as dis-

tinguished from lands held in frankalmoign discharged from such services.

Lay Impropriator. See IMPROPRIATION.

Lay Investiture. The putting of a bishop into possession of the temporalities of his see. This takes place when he performs homage (q.v.).

Lay Rector. The same as lay impropriator (q.v.).

Lazaret; Lazaretto. Formerly this meant a place in which a person coming from a country in which there was infectious disease performed quarantine. See, for instance, the title of the repealed statute 39 & 40 Geo. 3, c. 80.

Lead. When fines (q.v) and recoveries (q.v.) were used as modes of conveying land any complicated limitations, such as those in settlements, which might be required were effected by deeds specifying the uses to which the lands were to be held. If the deed was executed before the fine or recovery it was called a deed to lead to the uses; if afterwards it was called a deed to declare the uses.

Leading Case is a judicial decision or precedent settling the principles of a branch of law. Thus *Coggs* v. *Bernard* is the leading case on the law of bailments (q.v.). Mr. J. W. Smith published an excellent selection of leading cases, principally illustrating rules of the common law. His example has been followed by Messrs. White and Tudor in their *Leading Cases in Equity*, and by Mr. Cockle in his *Leading Cases on Evidence* and his *Leading Cases on the Common Law*.

Leading Questions, on the examination of a witness, are questions which directly or indirectly suggest to him the answer he is to give, or questions embodying a material fact and admitting of the answer "Yes" or "No." The general rule is that leading questions are allowed in cross-examination, but not in examination in chief.

Lease. A lease is in effect a conveyance or grant of the possession of property (generally but not necessarily land or buildings) to last during the life of a person, or for a term of years or other fixed period, or at will, and usually with the reservation of a rent. Leases for a life or lives are comparatively rare, and when a lease is spoken of, *primâ facie* a lease for years is meant. The person who grants the lease is called the lessor, the person to whom it is granted being the lessee; until he accepts the estate he has merely an *interesse termini* (q.v.), unless the lease takes effect under the Statute of Uses. It is essential to a lease that it should be for a less estate or term than the lessor has in the property, for if it comprises his whole interest it is a conveyance or assignment and not a lease. Again, if the intention of the parties is that the grantee is not to be entitled to exclusive possession of the property, the grant is a licence and not a lease.

A lease for years or at will is a chattel interest. See CHATTEL; ESTATE; LEASEHOLDS.

Where a person who is himself a lessee grants a lease of the same property to another person for a shorter term, it is properly called an underlease or sublease or a derivative lease.

A concurrent lease, or lease of a reversion, is one granted for a term which is to commence before the determination of a previous lease of the same land to another person. If under seal, it operates as an assignment of the reversion during the continuance of the previous lease, so that the new lessee is entitled to the rent and covenants under the previous lease; and after the expiration of that lease, it (the concurrent lease) operates as a lease in possession.

A lease in reversion is a lease which is not to take effect in possession immediately, and the term "reversionary lease" is sometimes used in the same sense: but strictly speaking a reversionary lease is one to take effect from the expiration or determination of a previous lease. It only creates an *interesse termini*.

With reference to the right or authority under which they are granted, leases are made either (1) under a right or power incident to the lessor's estate; thus a tenant in fee has power to grant leases for any term: or (2) under a power of appointment or limitation to uses; as where land is limited to A and his heirs, to such uses as B shall by demise appoint (see POWER); or (3) under a statutory power, *e.g.*, under the Settled Land Acts (q.v.): or (4) by virtue of a custom; thus an infant seised of land holden in socage may, by the custom of some places, make binding leases at the age of 15: or (5) by virtue of an authority given by the common law; thus a guardian in socage or by election may in some cases grant leases of the infant's lands.

As to leases by estoppel, see ESTOPPEL.

Leases are made either by deed: or by writing not under seal (called by the old writers "leases parol"): or without writing. The only leases of land or other corporeal hereditaments which need not be made by deed are leases at will, or for a term not exceeding three years under the Statute of Frauds (q.v.), and in practice the term lease commonly denotes a lease by deed.

A lease by deed in the ordinary form consists of the following parts: the premises, the habendum, the reddendum, the lessee's covenants, the proviso for re-entry, and the lessor's covenants (see those titles). The covenants in a lease are generally much more important than those in a conveyance; they vary according to the nature of the lease, but ordinarily they include covenants by the lessee for payment of the rent, and if the lease is one of a building, to repair and insure it, or if it is one of a farm or mine, to manage it in a proper manner; in a lease of a building there is also generally a covenant by the lessee not to underlet or assign the lease without the lessor's consent, and not to carry on certain trades or occupations, and a covenant for quiet enjoyment which merely guarantees the lessee against entry by the lessor and those claiming under him. The covenant implied by statute (see COVENANT) guarantees the lessee against entry by all persons whatsoever: it will be excluded if there be—and there usually is—an express covenant.

The rent and covenants are always binding on the original lessee and his representatives, notwithstanding any assignment which he may make. On assigning leaseholds, therefore, the assignee is bound to enter into a covenant with the assignor to indemnify him against this liability. The assignee is himself also liable for rent unpaid or covenants broken during his tenancy (provided the covenants run with the land, as to which see COVENANT); but when he assigns to another, his liability ceases so far as regards future rent or breaches of covenant. As to the statutory provisions enabling trustees in bankruptcy to get rid of liabilities under leases vested in them, see DISCLAIMER.

Leases are generally prepared in two parts, known as the lease and the counterpart: the lease is executed by the lessor alone, and is kept by the lessee; the counterpart is executed by the lessee alone, and is kept by the lessor.

Leases are in some cases subject to statutory provisions; such are leases at a rack-rent by tenants for life (as to which see EMBLEMENTS), and leases subject to the Agricultural Holdings Acts (q.v.).

The statutes under which ecclesiastical corporations sole or aggregate can grant leases of Church property are collected in *Chitty's Statutes* under the title "Leases, Ecclesiastical."

See ATTORNMENT; DEMISE; DISTRESS; GAME; RENT; TERM; USE AND OCCUPATION; BUILDING LEASE.

Lease and Release. This is a mode of conveying freehold land which was in common use from 1536 down to the year 1841. It was used to evade the Statute of Enrolments, 27 Hen. 8, c. 16, passed to prevent land from being conveyed secretly by bargain and sale (q.v.). The Act required only bargains and sales of estates of inheritance or freehold to be enrolled, and therefore it soon became the practice on a sale of land for the vendor to execute a lease to the purchaser for a year by way of bargain and sale, which under the Statute of Uses, 27 Hen. 8, c. 10, gave him seisin of the land without entry or enrolment, and then the vendor released his reversion to the purchaser by a deed known as a release, thus vesting in him the fee simple in possession without entry or livery of seisin. The lease and the release were executed on the same day, the release being dated for the following day and being executed after the lease. The consideration for the lease was a nominal sum of five or ten shillings, which was never paid, the real consideration being stated in the release. In 1841 the statute 4 Vict. c. 21, made a release effectual without the preliminary lease for a year, and in 1845 the Real Property Amendment Act, 1845, made a deed of grant sufficient for the conveyance of all corporeal hereditaments.

A release is still used (1) between joint tenants and coparceners (2) for the conveyance, to the owner of land, of rights over the land held by a person other than the owner (3) for the purpose of merging a remainder or reversion in the prior estate.

Before 1536 conveyance of lands of all tenures by lease and release had been practised: but the method differed from that used after 1536, there being first the lease, then an actual entry on the land by the bargainee or lessee, and then the release. It was the Statute of Uses that rendered actual entry unnecessary and so made the later form of lease and release practicable.

Until the Statute of Frauds was enacted in 1677 it was not necessary that the lease and release should be in writing.

Leaseholds are lands held under a lease for years. They are personal estate, being chattels real. But for the purposes of the Succession Duty Act, 1853 (q.v.), Locke King's Act (q.v.), and the statute 27 Eliz. c. 4 (see VOLUNTARY), leaseholds are on the same footing as real estate. And by the Wills Act, 1837, s. 26, a general devise of land, or lands and tenements, or the like, will include

the testator's leasehold estates, unless a contrary intention appears.

Leave and Licence. In an action for trespass to goods it is a good defence to plead that the act complained of was done with the "leave and licence," that is to say, the permission, of the plaintiff.

Leave to Defend. See JUDGMENT.

Leave to Move to set aside or vary a judgment might formerly be given by the judge at the trial of an action, when some point of law was raised, the decision of which affected the fate of the action; the motion was heard by a Divisional Court. This practice was abolished in 1876: see the Appellate Jurisdiction Act, 1876, s. 17. See MOTION FOR JUDGMENT; TRIAL.

Leeman's Acts. The Banking Companies (Shares) Act, 1867, and the Borough Funds Act, 1872, are known by this name.

Leet. See COURT LEET.

Legacy; Legatee. A legacy is a gift of personal property by will. The person to whom the property is given is called the legatee, and the gift or property is called a bequest (q.v.). The legatee's title to the legacy is not complete until the executor has assented to it. See ASSENT.

Legacies are of three kinds, specific, demonstrative and general.

A specific legacy is a bequest of a specific part of the testator's personal estate. Thus, a bequest of "the service of plate which was presented to me on such an occasion," is specific, and so also is a bequest of "£100 Consols standing in my name at the Bank of England." A specific legacy must be paid or retained by the executor in preference to the general legacies, and must not be sold for the payment of debts until the general assets of the testator are exhausted. See ASSETS.

On the other hand, a specific legacy is liable to ademption (q.v.), unless it is given in such a way as to refer to the state of the property at the testator's death; thus, a bequest of "the black horses which I shall be possessed of at my death," is specific, but it takes effect if the testator leaves property answering the description, although he may have sold the black horses which he had at the date of his will. A demonstrative legacy is a gift of a certain sum directed to be paid out of a specific fund; thus, "I bequeath to A B the sum of £50 to be paid out of the £100 Consols in my name," is a demonstrative legacy. Such a legacy is not adeemed by the testator selling or disposing of the fund in his lifetime, while it also has the advantage of being paid in priority to the general legacies if the fund is sufficient. A general legacy is one payable only out of the general assets of the testator: as where he bequeaths to A £100 sterling, or £100 Consols, without referring to any particular stock, although he may have £100 Consols standing in his name. So a legacy of a mourning ring of the value of £10 merely amounts to a general legacy of £10, with a direction to the executor to purchase a ring. A general legacy is liable to abatement or total failure, if the residuary estate is not sufficient to pay the testator's debts and other legacies (see ABATEMENT) unless it is given for valuable consideration, *e.g.*, to a wife in consideration of her releasing her dower.

Where personal property is bequeathed to trustees to be held upon trust, *e.g.*, to pay the income to A B for life—this is called a trust legacy.

Where a legacy is given to an infant or person beyond the seas, the executor may pay the amount into Court in the Chancery Division under Ord. 54 (b), r. 4, and Supreme Court Funds Rules, r. 41, and when the legatee comes of age, or returns, he may have it paid out to him on making an application by petition or summons. See PAYMENT INTO COURT.

See further as to legacies, CUMULATIVE; EXECUTOR; LAPSE; MARSHALLING; MORTMAIN; SATISFACTION; WILL.

Legacy Duty. A duty of trifling amount was first imposed only on legacies of the value of £20 and upwards by the statute 20 Geo. 3, c. 28, s. 1; and by the Legacy Duty Act, 1796, s. 1, a duty was imposed on the value of legacies of the like value and also upon every part of any residuary personal estate of the value of £100, the rate of the duty running from 2 per cent. in the case of any brother, sister, nephew, or niece, to 6 per cent. in the case of a stranger. The incidence and the rate of duty were subsequently varied by a multiplicity of Acts; and now legacy duty is payable in respect of a deceased person domiciled in the United Kingdom on every legacy and on every succession upon the intestacy of such a person, except where exemption is specifically allowed. Leaseholds are not subject to legacy duty: but succession duty (q.v.) is paid on them. The effect of the Stamp Act, 1815, s. 2, Sch. (Pt. III.) and of the Finance (1909-10) Act, 1910, s. 58, is that the rates of the duty are in the case of (1) a husband or wife or lineal ancestor or lineal descendants of the deceased, 1 per cent., (2) of brothers or sisters of the deceased or their

lineal descendants, 5 per cent.; and (3) of any other person whatsoever, 10 per cent. But no legacy duty and no succession (q.v.) duty is payable (1) where the principal value of the property passing and liable to estate duty (excluding property in which the deceased never had an interest and property of which he was never competent to dispose and which on the death passes to anyone other than the husband, wife or lineal ancestor or descendant) does not exceed £15,000 and (2) where the total legacies or successions derived by the same person do not exceed £1,000 or, in the case of a widow or child under twenty-one of the deceased, £2,000 (Finance (1909-10) Act, 1910, s. 58). Except in these cases, legacy duty is payable on everything except realty in addition to estate duty.

Legal is opposed (i) to that which is illegal or unlawful (see those titles); (ii) to that which is equitable (q.v.). As to legal memory, see MEMORY.

Legal Assets. See ASSETS.

Legal Estate. See ESTATE.

Legalis homo. (A "lawful man.") This anciently meant a man who was neither infamous, outlawed, nor excommunicated.

Legalise; Legalisation. When an act which is *primâ facie* illegal becomes legal, it is said to be legalised: thus many acts done upon a man's own property, which are injurious to the adjoining land and consequently actionable as nuisances, may be legalised by prescription, and thus form easements (q.v.).

When the execution of a document is attested by a notary, consul, magistrate, or the like, it is sometimes said to be legalised. This expression is borrowed from the French; it can hardly be said to be a technical term of law.

Legal Medicine. See FORENSIC MEDICINE.

Legal Quay. A place appointed by warrant of the Treasury (issued pursuant to s. 11 of the Customs Consolidation Act, 1876) for the loading and unloading of goods liable to duties.

Legatus regis vice fungitur a quo destinatur et honorandus est sicut ille cujus vicem gerit (12 *Co.* 17). (An ambassador fills the place of the king by whom he is sent, and is to be honoured as is he whose place he fills.) There seems to be an idea in some quarters that a British ambassador represents the Prime Minister: this is a mistake, but within recent years it has led an ambassador to refuse to receive a journalist who had written injuriously regarding a politician who happened to be Prime Minister.

Legem facere; Legem habere. *Legem facere* in the reign of Edward I. meant to institute legal proceedings by oath; and *legem habere* meant to possess the right *legem facere*.

Legergeld; Legerwite. The same as LAIRWITE (q.v.).

Leges Edwardi Confessoris. See EDWARD THE CONFESSOR, LAWS OF.

Leges et constitutiones futuris certum est dare formam negotiis non ad facta præterita revocari; nisi nominatim et de præterito tempore et adhuc pendentibus negotiis cautum sit (*Cod.* 1, 14, 7). (It is clear that laws and ordinances settle the course of future transactions and do not refer to bygone matters, unless their provisions relate expressly both to a past time—and to matters hitherto pending.) This maxim of the Roman law applies also in our law with the insertion of the words "or impliedly" after "expressly": see L. R. 6 Q. B. 23. Compare LEX PROSPICIT, ETC.

Leges Henrici Primi. See HENRY I., LAWS OF.

Leges posteriores priores contrarias abrogant (1 *Co.* 25). (Later laws abrogate prior contrary laws.) See LEGES ET CONSTITUTIONES, ETC.; and compare GENERALIA SPECIALIBUS NON, ETC.

Legis constructio non facit injuriam (*Co. Litt.* 183). (The law is construed so as not to work a wrong.) See CONSTRUCTIO LEGIS.

Legislative Committee. See NATIONAL ASSEMBLY, ETC.

Legitimacy; Legitimate. "Legitimate" signifies "lawful." The word is applied especially to children to signify that they have been born in lawful wedlock.

Under the Legitimacy Declaration Act, 1858, a natural-born subject of Great Britain may apply to the High Court, in the Probate, Divorce and Admiralty Division, for a declaration that he is legitimate, or that his parents or grandparents were validly married, or that he himself is validly married, or that he is a natural-born subject of the King. A judgment made on such a petition is *in rem*, that is binding on all the world.

See BASTARD; CHILD; MULIER; LYNDHURST'S ACT.

Legitime imperanti parere necesse est (*Jenk. Cent.* 120). (It is necessary to obey him who gives an order as of right.) Compare JUS NON HABENTI, ETC.

Legrewita. The Latinised form of LEGERWITE (q.v.).

Leibnitz. Gottfried Wilhelm Leibnitz was born on the 3rd July, 1646, in Leipzig, and

died at Hanover on the 14th November, 1716. He wrote *Methodus nova jurisprudentiæ*, *Codex juris gentium diplomaticus*, *Observationes de principiis juris*, and numerous miscellaneous works.

Lent. The forty days next preceding Easter Sunday (q.v.). See FAST DAYS.

Lep and Lace. Formerly a custom of the Manor of Writtel, in Essex, that every wheeled vehicle, other than that of a peer, which passed over the place known as Greenbury should pay fourpence to the lord.

Leproso amovendo, De. A writ which anciently lay to remove any leper who intruded himself upon his neighbours in the church or other public place.

Le Roy (1) **le veut,** (2) **s'avisera,** (3) **remercie ses bons sujets.** See ACT OF PARLIAMENT.

Le salut du peuple est la suprême loi. Montesquieu's translation of *Salus populi suprema lex* (q.v.).

Lèse-majesté. See LÆSÆ MAJESTATIS.

Le serement du visconte. (The Oath of the Sheriff.) An enactment printed in the *Statutes of the Realm* (vol. 1, p. 247) as of uncertain date, and in the *Statutes at Large* as of 34 Edw. I.

Les estatus de Excestre. (The Statutes of Exeter). Two enactment printed under these collective titles in the *Statutes of the Realm* (vol. 1, p. 210), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as 14 Edw. 1.

Les estatus de la Jeuerie. (The Statutes of Jewry.) An enactment printed under these titles in the *Statutes of the Realm* (vol. 1, p. 221), *s.v. Statutes of Uncertain Date*; printed also in the *Statutes at Large* (vol. 9, App., p. 28), as the *Statutum de Judeismo*.

Les estatuz del eschekere. (The Statutes of the Exchequer.) An enactment printed in vol. 1 of the *Statutes of the Realm* at p. 189, amongst the *Statutes of Uncertain Date*, and in the *Statutes at Large*, as 51 Hen. 3, st. 4, 5.

Leshchewes. (Windfalls.) (*Broke's Abr.* 341).

Lespegend. Used in the forged *Constitutiones de Foresta* (see CANUTE) as the title of a minor officer of the forest.

Lessee; Lessor. In the most general sense of the words, "where a man letteth to another lands or tenements for terme of life, or for terme of years, or to hold at will, he which maketh the lease is called lessor, and he to whom the lease is made is called lessee," says Littleton (§ 57).

In practice, however, the terms "lessor" and "lessee" are only used in the case of a lease for years, for occupation, building or mining purposes, or the like.

See LEASE; TERM; TENANT FOR LIFE; TENANT FOR YEARS.

Lestage. A form of lastage (q.v.) used by some old writers.

Leswes; Lesues. Used as meaning pastures in ancient conveyances.

Letare Jerusalem. See QUADRAGESIMALS.

Letter. With regard to contracts or agreements entered into by letter, the leading rule is, that a person who makes a proposal to another by letter is considered in law as making it during the whole time that the letter is travelling, and that as soon as the acceptor despatches his acceptance, he may treat the contract as complete. In other words, an acceptance by letter is complete as against the proposer from the date of posting the acceptance, if it arrives within the proper time. What is a "proper time" depends on whether the proposer has prescribed a mode and time of communicating the acceptance; if he has not, it depends on the nature of the business in hand. If however, the communication of the acceptance is delayed by the fault of the proposer, or by accident, the delay is not to be reckoned against the acceptor. The true principle also is, that the acceptor is at liberty to revoke his acceptance at any time before it reaches the proposer (*e.g.*, by telegraph), but this principle does not yet seem to have been established by any decision. The result is that if a person makes a proposal by post and does not receive an answer as soon as he expected, he cannot assume that the proposal has been rejected, except at his own risk.

Letter Missive, in ecclesiastical law, is a document sent with the *congé d'élire* to the dean and chapter, containing the name of the person whom they are to elect. See CONGÉ D'ÉLIRE.

Under the practice of the Court of Chancery, before a peer was served with the bill in a suit, he was formerly entitled to be informed by a communication from the Lord Chancellor, termed a letter missive, of the fact of the bill having been filed. See BILL OF COMPLAINT.

Letter of Credit. A letter of credit is an authority by one person (A) to another (B) to draw cheques or bills of exchange (with or without a limit as to amount) upon him (A) with an undertaking by A to honour the drafts on presentation. An ordinary letter of credit

also contains the name of the person (A's correspondent) by whom the drafts are to be negotiated or cashed: when it does not do so, it is called an open letter of credit.

A letter of credit is in fact a proposal or request to the person named therein, or (in the case of an open letter) to persons generally, to advance money on the faith of it, and the advance constitutes an acceptance of the proposal, thus making a contract between the giver of the letter of credit and the person cashing or negotiating the draft, by which the former is bound to honour the draft. See AGREEMENT.

Letters of credit are sometimes used in conjunction with circular notes, in which case the letter of credit is called a letter of indication. Circular notes are forms of drafts, generally for some specific amount, given with the letter and requiring to be signed by the bearer. Circular notes are chiefly used by persons travelling abroad, and may be obtained from almost any banker.

Letter of Licence was an agreement between a debtor and his creditors that the latter should for a specified time suspend their claims, and allow the debtor to carry on his business at his own discretion. Down to the virtual abolition by the Debtors Act (q.v.) of arrest for debt, it also contained an agreement by the creditors not to arrest the debtor. It was usually contained in a provision that the business should be carried on under the inspection and control of persons nominated by the creditors, who were called inspectors, and the agreement then became, and was termed, a deed of inspectorship.

The object of these instruments was to avoid bankruptcy proceedings. Neither of them is known in our present law of bankruptcy.

See COMPOSITION; BANKRUPTCY.

Letters Close (Literæ clausæ) are letters or missives in the name of the Sovereign, and sealed with the Great Seal, being directed to particular persons for particular purposes; they are closed up and sealed on the outside, whence their name. See LETTERS PATENT.

Letters of Administration. Where a person possessed of property, whether real or personal, dies intestate, or without an executor, the Probate, Divorce, and Admiralty Division will grant to a proper person an authority under the seal of the Court, called letters of administration, by which the grantee, the administrator, becomes clothed with powers and duties similar to those of an executor (q.v.). In addition to the oaths taken by the administrator, which are similar to those taken by an executor (see PROBATE), he enters into a bond. See ADMINISTRATION BOND.

If the deceased died wholly intestate, simple letters of administration are granted to one of the next of kin (*e.g.*, the widow or children of the deceased), or, if they renounce, to a creditor or other person, according to certain rules. If a will of the deceased exists, but no executor has been appointed, or the executor appointed pre-deceases the testator, or refuses or becomes incapable to act, the Court will grant (as a general rule, to the person having the greatest interest under the will, *e.g.*, the residuary legatee) letters of administration with the will annexed (*cum testamento annexo*), a grant which is similar to probate of the will.

As to limited grants of letters of administration, see GRANT.

Letter of administration are liable to the same stamp duty as probates.

Letters of Attorney. More generally known as a power of attorney (q.v.).

Letters of Business. These are instruments under the Sign Manual addressed by the Crown to the Convocation of the Province of York or Canterbury and conveying to Convocation the desire of the Crown that some special business therein mentioned should be considered by Convocation. Such letters have from an early date been issued upon various occasions. One such occasion was in 1283; the latest was in 1906, when Edward VII. authorised the Convocation of Canterbury to report upon the recommendations of the Royal Commissioners on Ecclesiastical Discipline which had been made earlier in that year.

Letters of Marque (or **Mart**) were extraordinary commissions issued, either in time of open war or in time of peace, after all attempts to procure legal redress had failed, by the Lords of the Admiralty, or the vice-admirals of a distant province, to the commanders of merchant ships, authorising reprisals for reparation of the damages sustained by them through enemies at sea. They were either "special," to make reparation to individuals, or "general," when issued by the Government of one State against all the subjects of another; the former have long been obsolete; the latter kind seems to be an authorization of privateering (q.v.) and therefore to be no longer allowed. (See REPRISALS.)

Letters of Request. In ecclesiastical practice, where a diocesan Court (q.v.) has jurisdiction in a case, but the plaintiff wishes the cause to be instituted in the Provincial Court (q.v.), he may apply to the judge of the

former Court for letters of request; and when the judge has signed them, and they have been accepted by the judge of the Provincial Court, a decree issues under his seal, calling upon the defendant to answer to the plaintiff in the suit.

The term "letters of request" is now more generally applied to the "request to examine witnesses in lieu of a commission," which may be made by the Court or a judge, under Ord. 37, r. 6 (a), to the Courts of foreign countries or British colonies, in which are persons whose evidence is required in a proceeding in this country. It is, or was, the only means of obtaining evidence in Austria, Germany, Luxemburg, Roumania, Russia, and Switzerland, none of which countries before the Great War allowed evidence to be taken by commission (q.v.) or examiner (q.v.), and it is now the usual means of taking evidence in India or the colonies (see MANDAMUS); but it is not available for the United States, which require that evidence should be taken by commission or by an examiner. See ROGATORY LETTER.

Letters Patent are grants by the Crown of lands, franchises, offices, etc., contained in charters or instruments not sealed up but exposed to open view with the Great Seal pendant at the bottom, and usually addressed to all the subjects of the realm.

As to letters patent for inventions, see PATENT; see also GRANT; GREAT SEAL; LETTERS CLOSE; WARRANT.

Levant and Couchant. When land to which a right of common of pasture is annexed can maintain during the winter by its produce, or requires to plough and manure it, a certain number of cattle, those cattle are said to be levant and couchant on the land. The origin of this double definition of levancy and couchancy probably was, that the number requisite to plough and manure was the limit to common appendant, and the capacity of wintering was the limit to common appurtenant. It appears that the Courts have adopted the latter admeasurement as the more liberal in both cases, but they have never denied the right of common appendant to be admeasured by its original standard. It is therefore commonly said that cattle levant and couchant are such as the produce of the land will maintain during the winter, without reference to their being required for its tillage. Levancy and couchancy is one of the standards for ascertaining the number of cattle which each commoner may put on the common. See COMMON.

If cattle escape from A.'s land into B.'s land by default of B. (as for want of his keeping a sufficient fence), they cannot be distrained for rent by B.'s landlord until they have been levant and couchant on the land, that is, until they have been at least one night there. If they escape by default of A., they may be distrained immediately.

Levant Company. After certain persons had opened up trade with the Sultan (or the Grand Signior, as he was then called), Elizabeth granted them a monopoly of that trade in 1581. James I. incorporated them in 1605, by a charter which confirmed their monopoly, gave them the right of choosing the consuls and vice-consuls in all places in the Levant Seas, and gave them power to fine and imprison members of the company. In 1643 the Long Parliament gave them the further right of nominating the ambassador at Constantinople. The privileges of the company were confirmed by the statute 26 Geo. 2, c. 13. The company actually nominated and paid the ambassador until 1803, and the consuls in Turkey until 1825, when the charter was surrendered pursuant to the statute 6 Geo. 4, c. 35.

Levari facias was a writ of execution which commanded the sheriff to levy a judgment debt on the lands and goods of the debtor by seizing and selling the latter, and receiving the rents and profits of the lands until the debt was satisfied. This writ had been practically superseded before 1883 by the writ of *elegit* (q.v.): and the Bankruptcy Act, 1883, s. 146 (2) enacted that it should no longer be issued in any civil proceeding. The writ of *sequestrari facias* (q.v.) is in the nature of a *levari facias*, and was hence sometimes called a *levari facias de bonis ecclesiasticis*.

Levitical Degrees. These degrees of affinity are referred to in the statute 38 Hen. 8, c. 38, s. 2, and are set forth in the eighteenth chapter of the Book of Leviticus. Marriage within them is prohibited except, since 1907, in the case of a deceased wife's sister, and, since 1921, with a deceased husband's brother. See DECEASED WIFE'S SISTER.

Levy. To levy is to raise a sum of money, *e.g.*, by a writ of execution against the property of a judgment debtor. See EXECUTION; FIERI FACIAS.

Lex Angliæ est lex misericordiæ (2 *Inst.* 315). (The law of England is a law of mercy.) This is said by Coke in connection with the Statute of Gloucester (6 Edw. 1), c. 9, which was passed in relief of those committing homicide by misadventure or in self-defence.

Lex Angliæ nunquam matris sed semper

patris conditionem imitari partum judicat (*Co. Litt.* 123). (The rule of the law of England is that the offspring shall always follow the condition of the father; never that of the mother.) And so if a villein took a free woman to wife the children of the marriage were villeins. Compare PARTUS SEQUITUR, ETC.

Lex Angliæ sine Parliamento mutari non potest (2 *Inst.* 619). (The law of England cannot be changed except by Parliament.) See PROCLAMATIONS, ROYAL.

Lex beneficialis rei consimili remedium præstat (2 *Inst.* 689). (A beneficial law affords a remedy for cases both of which are on the same footing.) Compare IN CONSIMILI CASU.

Lex citius tolerare vult privatum damnum quam publicum malum (*Co. Litt.* 132). (The law is more willing to tolerate a private loss than a public evil.) Thus, no action lies for anything said by a member of Parliament in Parliament, or by an advocate in the course of judicial proceedings or by a witness in the witness-box, or by one official of another in a report: for if such actions lay, Parliament, the Courts, and the public services could not be carried on.

Lex dilationes semper exhorret (2 *Inst.* 240). (The law always abhors delays.) This is a comment by Coke on the Statute of Westminster I. (3 Edw. 1), c. 40, passed for the relief of persons who had been "delayed of their rights" by false vouching to warranty. Compare LEX REPROBAT, ETC.

Lex domicilii is the law of the country where a person has his domicile (q.v.).

Lex est dictamen rationis (*Jenk. Cent.* 117). (Law is the word of reason.)

Lex est exercitûs judicum tutissimus ductor (2 *Inst.* 526). (The law is the safest guide of all the judges.)

Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet (*Co. Litt.* 319). (Law is the supreme science which commands those things which are useful and necessary, and forbids what is contrary thereto.)

Lex est sanctitio sancta, jubens honesta, et prohibens contraria (2 *Inst.* 587). (Law is a sacred sanction, commanding what is proper and forbidding what is not.) This is a quotation from Bracton.

Lex est tutissima cassis, sub clypeo legis nemo decipitur (2 *Inst.* 56). (The law is the safest helmet; under the shield of the law no man is deceived.)

Lex fingit ubi subsistit æquitas (11 *Co.* 90). (The law has recourse to fictions when the resources of equity come to an end.)

Lex fori. See LEX LOCI.

Lex injusta non est lex. (Any interpretation of the law which makes the law work injustice is bad law.) But see ÆQUUM ET BONUM, ETC.

Lex intendit vicinum vicini facta scire (*Co. Litt.* 78). (The law holds that one neighbour knows what another does.)

Lex loci is late law-Latin for "the law of the place." It is chiefly used in the following phrases: the *lex loci* [*celebrati*] *contractûs* is the law of the place where a contract was made; *lex loci solutionis* is the law of the place of payment, that is, of the place where, by the terms of the contract, payment is to be made: *lex loci actûs* is the law of the place where a transfer of property or some similar formal act has been performed: *lex loci rei sitæ* is the same as *lex situs* (q.v.): *lex loci delicti* is the law of the place where a tort or wrong has been committed: *lex fori* is the law of the place where judicial proceedings have been taken to enforce an obligation, etc. See INTERNATIONAL LAW; JURISDICTION; LOCUS REGIT ACTUM.

Lex mercatoria. (The law merchant.) See CUSTOM.

Lex merciorum. See MERCHENLAGE.

Lex necessitatis est lex temporis, scilicet, instantis (*Hob.* 159). (The law of necessity is the [only] law for the time, that is to say, for the instant.) Compare NECESSITAS EST LEX, ETC.

Lex neminem cogit ad vana seu inutilia peragenda. An expanded version of *Lex non praecipit, etc.* (q.v.).

Lex neminem cogit ostendere quod nescire præsumitur (*Lofft*, 569). (The law compels no one to disclose that which he is presumed not to know.) This maxim would seem to apply to privileged communications.

Lex nil frustra facit (*Jenk Cent.* 17). (The law does nothing in vain.) Compare INUTILIS LABOR, ETC.

Lex non a rege est violanda (*Jenk. Cent.* 7). (The law is not to be violated by the king.) This is said as a gloss on an ancient decision that the king's justices ought not to comply with any royal command which was repugnant to the law.

Lex non cogit ad impossibilia (*Co. Litt.* 231*b*). (The law does not compel the impossible). At Hobart, 96, the maxim also occurs with the omission of *ad*. Compare IMPOTENTIA EXCUSAT, ETC.; LEX NON INTENDIT, ETC.

Lex non curat de minimis (*Hob.* 88). (The law takes no heed of trifles.) A variant of DE MINIMIS, ETC.

Lex non debet deficere conquerentibus in justitiâ exhibendâ (*Co. Litt.* 197). (The law ought not to make default in dispensing justice to those who seek it.)

Lex non deficit in justitiâ exhibendâ (*Jenk. Cent.* 31). (The law does not fail to dispense justice.) That is to say, the law always does justice.

Lex non favet delicatorum votis (9 *Co.* 58). (The law does not favour the wishes of the fastidious.) Thus, although an action will lie for "erecting a hogstye so near the house of a neighbour that the air thereof is corrupted," or for depriving his house of light or air, no action will lie because of the erection of any building which interferes with the view from a house.

Lex non intendit aliquid impossibile (12 *Co.* 89). (The law does not mean anything that is impossible.) Compare LEX NON COGIT, ETC.

Lex non præcipit inutilia (*Co. Litt.* 127 *b*). (The law does not enjoin useless things.)

Lex non requirit verificari quod apparet curiæ (9 *Co.* 54). (The law does not require that which is apparent to the Court to be verified.) In *Co. Litt.*, at 303*b*, Coke says "That which is apparent to the Court by necessary collection out of the record need not be averred": and this maxim would seem to mean that, rather than "facts need not be proved of which the Court takes judicial notice."

Lex non scripta. (The unwritten law; that is to say, the common law.) See LAW.

Lex plus laudatur quando ratione probatur (*Litt. Epil.*). (The law is most worthy of approval when it is in accordance with reason.)

Lex posterior derogat priori (*Mackeld, Civ. L.* 5). (A later Act overrules an earlier one.) Compare CONSTITUTIONES TEMPORE, ETC.; LEGES POSTERIORES, ETC; PRIORES LEGES, ETC.

Lex prospicit non respicit (*Jenk. Cent.* 284). (The law looks forward, not backward.) That is to say, that no statute is retrospective in its action except by express provision or necessary implication. Compare LEGES ET CONSTITUTIONES, ETC; NOVA CONSTITUTIO, ETC.

Lex punit mendacium (*Jenk. Cent.* 15). (The law punishes falsehood.)

Lex rejicit superflua, pugnantia, incongrua (*Jenk. Cent.* 133). (The law rejects such things as are superfluous, contradictory, and incongruous.) In deciding which shall be rejected out of things contradictory or superfluous it is guided by the maxims set out at INTERPRETATIO (q.v.).

Lex reprobat moram (*Jenk. Cent.* 35). (The law disapproves of delay.) Compare LEX DILATIONES, ETC.

Lex sacramentalis. Compurgation (q.v.): see *Leg.* Hen. 1, c. 9.

Lex scripta. (The written law; that is to say, statute law.) See LAW.

Lex semper dabit remedium (*Jacob*, 69). (The law will always give a remedy.) See UBI JUS, ETC.; IN NOVO, ETC.; but compare DAMNUM SINE, ETC.

Lex semper intendit quod convenit rationi (*Co. Litt.* 78). (The law always intends what is in accordance with reason.) See also LEX EST RATIO, ETC; LEX NON COGIT, ETC.

Lex situs is modern law-Latin for "the law of the place where property is situated." The general rule is, that lands and other immoveables are governed by the *lex situs*, that is, by the law of the country in which they are situated. See LEX LOCI.

Lex spectat naturæ ordinem (*Co. Litt.* 197). (The law has regard to the order of nature.) Thus, the law will not compel a man to demand that which he cannot, in the nature of things, recover. Compare LEX NON COGIT, ETC.

Lex succurrit ignoranti (*Jenk. Cent.* 15). (The law assists the ignorant.) But not if their ignorance is ignorance of law. See IGNORANTIA FACTI, ETC.

Lex talionis. The primitive law embodied in the phrase "an eye for an eye, a tooth for a tooth." It survives to this day in the shape of capital punishment for murder. The statute 37 Edw. 3, c. 18, made a curious attempt to apply it by enacting that he who preferred an accusation should be put under sureties (which Lambarde calls "Sureties of Taliation") to undergo, in the event of the accusation being found to be false and malicious, the punishment to which the accused person, if found guilty, would have been liable; but the statute 38 Edw. 3, c. 9, repealed this enactment, and provided instead that the false accuser should be imprisoned until he had paid damages to the accused and a fine to the king. Except in this instance the *lex talionis* has never, apart from murder, been incorporated in our law.

Lex terrena. An ancient designation of the common law when regarded as the law of earthly origin, and contrasted with the Law Christian or spiritual law.

Lex uno ore omnes alloquitur (2 *Inst.* 184). (The law speaks to all with one voice.) This is quoted in connection with the Statute of Westminster I., c. 14, which provided that the one law should prevail throughout the whole land. Compare NIHIL IN LEGE, ETC.

Lex Wallensica. The ancient laws of Wales.

Liability is the condition of being actually or potentially subject to an obligation, and is used either generally, as including every kind of obligation, or, in a more special sense, to denote inchoate, future, unascertained or imperfect obligations, as opposed to debts, the essence of which is that they are ascertained and certain. (See DEBT.) Thus when a person becomes surety for another, he makes himself liable, though it is unascertained in what obligation or debt the liability may ultimately result: and when a person becomes a member of a company he makes himself liable for the debts of the company, to be ascertained when it is wound up. See LIMITATION OF LIABILITY.

Libel.—I. In the widest sense of the word, a libel is a published writing, picture, or similar production, of such a nature as to immediately tend to occasion mischief to the public, or to injure the character of an individual. Hence libels are of two kinds, public and private.

A public libel is one which tends to produce evil consequences to society, because it is either blasphemous (see BLASPHEMY), or obscene (q.v.), or seditious (q.v.). The publication of such a libel is a misdemeanour. To this class also belong libels on the Houses of Parliament, which are contempts or breaches of privilege: libels on Courts of justice, or on persons concerned in proceedings before Courts, which are contempts of Court (q.v.): and libels on foreign rulers, ambassadors, etc.

Private libels are of two kinds. A defamatory libel, or a libel on the character of an individual, is a false and malicious writing, picture, or the like, published concerning a certain person, and which either brings him within the danger of the law by accusing him of a crime, or has a tendency to injure him in his profession or calling, or by holding him up to scorn, ridicule, hatred or execration, impairs him in the enjoyment of general society, or by blackening the memory of one who is dead, tends to provoke a breach of the peace. A defamatory libel is a civil injury, giving rise to a right of action for damages by the person defamed. It is also a misdemeanour, and makes the offender punishable criminally by fine and imprisonment. The question whether a publication is libellous or not is one of mixed fact and law, and rests with the jury, subject to the judge's direction as to the law (see FACT); and this applies in criminal as well as in civil proceedings. See FOX'S LIBEL ACT.

The publication or threatened publication, or any offer to refrain from the publication, of any libel upon any person whether living or dead, in order to obtain money or other benefit, is a misdemeanour under the Larceny Act, 1916, s. 31.

A libel may be injurious to a person's property or trade. Thus, if a person falsely and maliciously publishes statements calculated to injure the property (*e.g.*, the business) of another, this is a libel, and not only gives rise to a right of action for damages, but may also be restrained by injunction.

See APOLOGY; DEFAMATION; INNUENDO; JUSTIFICATION; MALICE; NEWSPAPER; PRIVILEGE; PUBLICATION; SLANDER.

II. In the Ecclesiastical Courts, the first plea in a plenary cause (not being a criminal cause) is termed the libel, and runs in the name of the party or his proctor, who alleges and propounds the facts on which his demand is based. See PLEA.

Libellant; Libellee. The persons by and against whom respectively a libel is filed in an ecclesiastical Court. Formerly the terms applied also to the persons by and against whom proceedings were brought in the old Court of Admiralty.

Libera batella. (A free boat.) The right of fishing with a boat in waters where no general public right of fishing existed.

Libera chasea habenda, De. A writ which anciently lay for one who claimed a free chase (q.v.).

Liber albus. The White Book of London (q.v.).

Liberam legem amittere. To lose one's free law: one of the consequences of the "villainous judgment" (q.v).

Libera piscaria. (A free fishery): see FISHERY.

Liber assisarum. A compilation of selected cases from the manuscript year books of the reign of Edward III. Coke (1 *Inst.* 198*b*) styles it a book of great authority in law.

Liberata pecunia non liberat offerentem (*Co. Litt.* 207). (Money being set free does not set free the party offering.) This means that a refusal of a tender does not free the debtor from the debt in respect of which the tender is made: but of course he can plead tender (q.v.).

Liberate. An obsolete original writ authorising the payment of money out of the Exchequer.

When execution had been issued on a statute staple by a writ in the nature of an extent, the lands, tenements and chattels of the conusor or debtor were not delivered to the

conusee or creditor, but were seized by the sheriff "into the king's hands," and in order to get possession of them the conusee had to sue out a writ called a *liberate*, which commanded the sheriff to deliver them into his hands. See EXTENT.

Liberate Rolls. "Rolls" in the Record Office containing lists of the writs of Allocate (q.v.), Computate (q.v.), and Liberate (q.v.) which were issued between 1201 and 1436.

Liber Eliensis. The only known ancient copy of the *Inquisitio Eliensis* (q.v.) is the document called the *Liber Eliensis* which is in the library of Trinity College, Cambridge.

Liber fœdorum. See TESTA DE NEVILL.

Liber judicialis Alfredi. The Dooms of Alfred. See ALFRED.

Liber niger domus regis. (The Black Book of the king's household.) A record of matters connected with the household of Edward IV.

Liber niger scaccarii; Liber niger parvus. See BLACK BOOK OF THE EXCHEQUER.

Liber quadripartitus. A translation of the old dooms into Latin made about the year 1118. The first part contains the old English laws, the second some important State papers. The third and fourth parts, dealing respectively with legal procedure and theft, are not extant. See Liebermann, *Quadripartitus*; Halle, 1892.

Liber ruber scaccarii. See RED BOOK OF THE EXCHEQUER.

Libertas est naturalis facultas ejus quod cuique facere libet, nisi quod de jure aut vi prohibetur (*Co. Litt.* 116). (Liberty is the power given by nature of doing what each man pleases, unless it be a thing the doing of which is prevented by the law or by actual force.) This is cited in a disquisition on villenage.

Libertas est res inestimabilis (*Jenk. Cent.* 52). (Liberty is a priceless thing.)

Libertate probandi, De. A writ which anciently lay for one who, being claimed as a villein, offered to prove that he was free: it required the sheriff to take security from him to appear and prove his freedom before the justices and directed that upon such security being given the alleged villein should go unmolested pending the decision of the matter. See NATIVO HABENDO, DE.

Libertates regales ad coronam spectantes ex concessione regum a corona exierunt (2 *Inst.* 496). (Royal franchises pertaining to the Crown are alienated from the Crown by grant from the kings.) This is said by Coke in connection with the *Statutum de quo warranto*, 18 Edward 1, which applied to all *jura regalia* vested in subjects.

Libertatibus allocandis, De. A writ which anciently lay for a citizen or burgess impleaded contrary to his right to be impleaded only within his city or borough.

Libertatibus exigendis in itinerere, De. A writ which anciently lay to the justices in eyre directing them to allow a man to appear by an attorney.

Libertinum ingratum leges civiles in pristinam servitutem redigunt; sed leges Angliæ semel manumissum semper liberum judicant (*Co. Litt.* 137). (The civil laws reduce an ungrateful freedman to his original slavery, but the laws of England regard as free for ever a man who has ever been made a free man.)

Liberty.—I. In its general sense, a liberty is an authority to do something which would otherwise be wrongful or illegal. Thus, if a man grants to another trees growing on land, that implies a liberty to cut them and carry them away. (See FREE ENTRY, EGRESS AND REGRESS.) Such a liberty may be either personal to the grantee, or it may be inherent or annexed to property so as to pass with it on an assignment. See LICENCE.

II. "Liberty" is also used as equivalent to "franchise" (q.v.), both as denoting a right and as denoting the place where the right is exercisable. Thus, the Liberty of the Savoy is a place subject to a franchise. As to writs of execution within a liberty, see NON OMITTAS.

Liberty of the Press. This simply means that such a thing as an *imprimatur* (q.v.) is now unknown to our law, and that every man may print and publish what he pleases, although, of course, he will be liable to a prosecution if he prints anything which is a criminal libel, or which is obscene, blasphemous or seditious, and to civil proceedings if he prints defamatory matter. See PRESS.

Liberty of the Rules. In certain circumstances prisoners in the King's Bench, Fleet, and Marshalsea prisons obtained permission to live outside the actual prisons but within certain adjacent areas known as the Rules. This, which was called the Liberty of the Rules, was abolished, together with the prisons, by the Queen's Prisons Act, 1842. See QUEEN'S PRISON.

Liberum tenementum. A freehold or frank tenement (q.v.). Formerly the defendant in an action of trespass to land could plead that the *locus in quo* was the close soil and freehold of the defendant. This was called the plea or avowry of *liberum tenementum*.

Libra pensa. (A weighed pound.) In early times, and more especially during periods of debasement of the currency, there was sometimes used as a measure of money a pound which, instead of being the twenty shillings or two hundred and forty silver pennies making up the customary pound, was an actual pound weight of pure silver. See SILVER COINS.

Librata terræ. A measure of land containing four oxgates (q.v.), each of which seems to have contained thirteen acres.

In the time of Henry III. the owner of fifteen *libratas terræ* was liable to receive knighthood, which was then regarded as undesirable owing to the attendant expenses.

Licence.—I. In its general sense, a licence is an authority to do something which would otherwise be inoperative, wrongful or illegal. (See AUTHORITY; LIBERTY.) Thus, a lease frequently contains a covenant by the lessee not to assign the term without the lessor's licence.

II. In the law of real property, a licence is generally an authority to do an act which would otherwise be a trespass. A licence passes no interest, and therefore if A grants to B the right to fasten barges to moorings in a river, this does not amount to a demise, nor give the licensee an exclusive right to the use of the moorings, nor render him liable to be rated as the occupier of part of the bed of the river. Hence, also, if a person by deed grants an exclusive licence for the use of land, this may amount to a lease, or to the grant of an incorporeal hereditament (see LEASE). A mere licence is always revocable, but when a licence comprises, or is connected with, a grant of an interest, it is generally irrevocable: thus, a licence by A to hunt in his park is revocable; but a licence to hunt and take away the deer when killed is in truth a grant of the deer with a licence annexed to come on the land, and if the grant is good the licence is irrevocable. So a licence may be irrevocable if granted for valuable consideration.

III. A marriage licence is an authority enabling two persons to be married. Such licences are of three kinds. A special licence is granted by the Archbishop of Canterbury, and enables the parties to be married in any church or chapel or other meet and convenient place. An ordinary licence is granted by any archbishop or bishop for the marriage of persons within his diocese in a church or chapel in which banns may lawfully be published. The effect of the ordinary licence is merely to legalise marriage without banns: the grant of such a licence would appear to be entirely in the discretion of the bishop and the only remedy in case of refusal is to have recourse to either banns or a special licence. A superintendent registrar's licence is one granted by the superintendent registrar of the district in which the parties, or one of them reside, authorising the solemnization of a marriage between them according to the rites of the Church of England, or the usages of the Quakers or Jews, etc., or such form as they think fit to adopt. See BANNS; MARRIAGE; MARRIAGE ACTS.

IV. Licences for the manufacture and sale of intoxicating liquors and refreshments are of three kinds, according to the authorities by whom they are granted. A magistrate's or justice's licence is granted as a kind of certificate that the applicant is a proper person to be intrusted with the sale of intoxicating liquors, and that the "premises" which he occupies are fit for the purpose. In counties, new licences are granted by the justices of the petty sessional division present at the meeting held by them every year, and called "the general annual licensing meeting," and must be confirmed (except in the case of outdoor licences) by the justices at quarter sessions (Licensing (Consolidation) Act, 1910, ss. 2 (2), 6 (2), 9, 10). In county boroughs and in boroughs, not being county boroughs but having ten justices', licences are granted by "the borough licensing committee," appointed every year from among themselves by the borough justices, and confirmed by the whole body of borough justices, or if the borough has not ten justices, licences are granted by the borough justices, and confirmed by a "joint committee" composed of three borough and three county justices (*ib.* ss. 2 (3), 3, 4).

The magistrate's licence entitles the holder to take out the corresponding excise licence (*ib.* s. 1), which is granted by the Commissioners of Inland Revenue, and is a mode of levying a tax on the sale of liquors and refreshments.

Both magistrates' and excise licences require to be renewed every year, and are of various descriptions, according to the number and kind of liquors authorised to be sold under them (the publican's licence, the beerhouse licence, wine licence, etc.), and to the question whether the liquor is to be consumed on or off the premises (on- and off-licences), and to the time during which they authorise the consumption (the six-day licence, *i.e.*, excluding Sundays: the early closing licence, etc.) A provisional licence may also be granted in respect of premises about to be constructed or

in course of construction (*ib.* s. 33). See COMPENSATION AUTHORITY; CONFIRMATION AUTHORITY.

There are also excise licences granted without the necessity of a magistrate's licence, *e.g.*, the refreshment house licence (Refreshment Houses Act, 1860, s. 6), which does not authorise the sale of intoxicating liquors, and the licences to brewers, wholesale beer dealers, maltsters, distillers, dealers in foreign wines, manufacturers of and dealers in tobacco, etc.

Among miscellaneous licences, or licences not granted in the usual way by justices or the excise authorities, may be mentioned the "occasional licence," namely, a licence granted by the excise authorities, on the written consent of a petty sessional court, or failing a court, of two justices sitting together, to a person already licensed to sell liquors to be consumed on the premises, authorising the sale of them at some other place between certain hours and on a special occasion (*e.g.*, a fair, race, ball, etc.) specified in the licence (Licensing (Consolidation) Act, 1910, s. 64). The term "occasional licence" was formerly also applied to an exemption granted by the commissioners of police or other "local authority" of the district, exempting the person to whom it is granted from the rules relating to the closing of premises on a special occasion (*e.g.*, a fête or ball) and during certain hours specified in the licence: but such an exemption is now (*ib.* s. 57) known as a "special order of exemption," while a "general order of exemption" (*ib.* s. 55) is a continuing authority to keep open on such days and during such hours (other than the period from 1 a.m. to 2 p.m.) as may be required for the accommodation of persons (such as newspaper employees in Fleet Street or market gardeners, etc., in Covent Garden) whose business brings them into the neighbourhood during unusual hours.

V. There are also numerous other varieties of licence, such as game licences (see GAME), licences for making and selling gunpowder, fireworks, etc., licences (Racecourses Licensing Act, 1879) for racecourses in the suburbs of London, for the reception of lunatics, for retreats for habitual drunkards (see DRUNKENNESS), licences to use patents (q.v.), etc.

Licence to Arise (Licentia surgendi). This was a time allowed by the Court to a tenant who had been essoined *de malo lecti* (see ESSOIN) in a real action to arise from his bed and appear. It was also the title of a writ used in the matter. See Bracton *lib.* 5; Fleta *lib.* 6.

Licence to Convocation. The statute 25 Hen. 8, c. 19, provides that Convocation cannot enact any canons or constitutions without the king's "assent and licence." Such assent and licence is given by the document known as a licence to Convocation.

Licensing Acts. See LICENCE.

Licensing Authority. The body which grants, or declines to grant, justices' licences for the sale of intoxicating liquor by retail. See LICENCE (IV.).

Licentia concordandi. The king's licence or permission for which the king's silver (q.v.) was paid on the passing of a fine.

Licentia loquendi (Li. lo.). Leave to imparl (q.v.).

Licentia transfretandi. A writ which was anciently directed to the warden of a channel port and commanding him to permit the passage overseas of such persons as had obtained the royal licence.

Licet dispositio de interesse futuro sit inutilis, tamen fieri potest declaratio præcedens quæ sortiatur effectum, interveniente novo actu (*Bac. Max. Reg.* 14). (Although the grant of a future interest is inoperative, yet it may become a declaration precedent, which will take effect on the intervention of some new act.) The settlement of after-acquired property illustrates this maxim.

Licita bene miscentur, formula nisi juris obstet (*Bac. Max. Reg.* 24). (Things permitted are properly united unless a rule of law intervenes.) A common case is a grant of a rent by a tenant for life and the remainderman.

Lidford Law. Such law as was said to prevail in a place where the procedure was to hang a man first and try him afterwards. Lidford (now Lydford), in Devonshire, had rather a bad name: but there is no evidence that, in the ordinary course, an alleged felon was first executed and then tried there.

Liege. See HOMAGE.

Lien is a right by which a person is entitled to obtain satisfaction of a debt by means of property belonging to the person indebted to him. A lien is therefore a species of security (see SECURITY; RIGHT), but differs from a mortgage, charge or the like in this respect, that in the case of a mortgage or charge the origin of the debt is immaterial (*e.g.*, it may be a loan, a debt for goods sold, etc.), while a lien can only be a security on property which is or has been the subject of a transaction between the parties; thus, if A sells lands to B, A has a lien on them for the unpaid purchase-money, unless he expressly

or impliedly waives his right; and a vendor of goods who is an "unpaid seller" within the meaning of s. 38 of the Sale of Goods Act, 1893, has such lien on the goods as is provided by ss. 39, 41-48 of that Act.

I. With reference to their origin, liens arise either by operation of law or by agreement between the parties. Liens arising by operation of law (liens by implication, implied liens) are those which arise from the relation of the parties, without express or tacit stipulation, and either by the rules of the common law (as in the case of the vendor's lien for purchase-money mentioned above), by the rules of equity (equitable liens), or under the provisions of a statute (statutory liens), of which two latter classes examples will be found below. Liens by agreement between the parties (conventional liens) are those created intentionally in cases where the relation between the parties is not such as to give rise to a lien by operation of law, as where a carrier stipulates for a general lien (*infra*) on goods sent him for transmission. The intention to create the lien may be express, or it may be implied, *e.g.*, from a previous course of dealings between the parties. See IMPLIED.

II. With reference to the nature of the right which they confer on the creditor, liens are of two kinds.

A retaining (or possessory) lien is the right of the creditor to retain possession of his debtor's property until his debt has been satisfied; thus, if a person takes a watch to a watchmaker to be repaired, the watchmaker has a lien on the watch for his remuneration, *i.e.*, has the right of retaining it until his reasonable charges are paid. In this instance the lien is a particular lien, because it exists only as a security for the particular debt incurred in respect of the watch itself, while a general lien is available as a security for all debts arising out of similar transactions between the parties; thus, if a solicitor has possession of title deeds belonging to his client, he has a general lien on them, that is, he is entitled to retain them until he is paid not only his charges in respect of the deeds themselves, but also the whole amount owing to him from the client for professional services up to that time. (See also CHARGE.) General liens exist only in pursuance of a usage to that effect in the particular trade or business, the principal instances being in the case of solicitors, bankers, innkeepers, wharfingers and factors.

A charging lien is the right to charge property in another's possession with the payment of a debt or the performance of a duty; an instance of this is the equitable lien of a vendor of land for the unpaid purchase-money. A charging lien can be enforced by bringing an action (formerly by filing a bill in equity) for a sale of the property. The important distinction between a possessory and a charging lien is that in the case of the former, if the creditor gives up possession of the property, he loses his lien, while it follows from the nature of a charging lien that the property need not be in the creditor's possession.

There are also various forms of maritime lien, or lien on a ship, freight, etc. some of which are possessory, and some charging; thus, a shipowner has, independently of contract, a possessory lien on goods carried in his ship for the freight due in respect of them. If a ship is injured in a collision by the negligence of the other ship, the owners of the former have a maritime (charging) lien on the latter for the damage; so the master of a ship has a maritime (charging) lien on the ship and freight for his wages and disbursements (see Merchant Shipping Act, 1894, s. 167); this is an instance of a statutory lien, or lien created by statute. A maritime charging lien can be enforced by proceedings in the Probate, Divorce and Admiralty Division, in which (*ib.* s. 693) distress and sale of the ship may be ordered.

"Lien" formerly denoted "*obligatio*" generally. "Lien," says the *Termes de la Ley*, "is a word of two significations—Personal lien, as a bond, covenant, or contract; and real lien, a judgment, statute, recognizance, or an original against an heir, which oblige and affect the land." Coke uses it as meaning a warranty. These uses of the word are obsolete.

Lieutenancy, Commission of. In the reign of Edward VI. commissions of lieutenancy, which were practically the same as the earlier commissions of array (q.v.), began to be issued and were addressed to the then newly-created lieutenants (or lords lieutenant (q.v.)) of the counties. They continued to be issued from time to time up to the period of the Civil War. After the Restoration they fell into disuse as the result of the creation of the militia (q.v.) system.

Life. The law presumes the continuance of a given state of facts unless it be shown either that it has terminated or that in the inevitable course of events it must have terminated. Once the fact of life on a given date has been established, the law will presume its continuance

unless there be evidence, or a presumption of fact recognised by the law, to the contrary effect. There is no presumption that any human life must terminate within any specified period. See ABSENCE FOR SEVEN YEARS; COMMORIENTES; PRODUCTION.

See DEATH; TENANT FOR LIFE.

Life Assurance. See ASSURANCE; INSURANCE; INTEREST; POLICY OF ASSURANCE.

Life Peer. No such thing is known to the law except in the case of the Lords of Appeal in Ordinary (q.v.).

Ligan. See JETSAM.

Ligeance is the old-fashioned equivalent for "allegiance" (q.v.).

Ligeantia est vinculum fidei: ligeantia est legis essentia (*Co. Litt.* 129). (Ligeance is the bond of fidelity, and the essence of the law.) Coke cites this maxim in connection with the rule that in an action by an alien against a subject the defendant could plead as a defence that the plaintiff was born "out of the ligeance."

Light. See ANCIENT LIGHTS.

Lightermen. See WATERMEN.

Lighthouses; Lighthouse Authorities. At common law no one but the Crown could erect beacons, lighthouses and seamarks. Many of the rights of the Crown with regard to such matters were at one time delegated by letters patent to the Lord High Admiral. The advent of the Trinity House (q.v.) resulted in all the powers of the Crown being vested in them. They began with beacons (q.v.), and ultimately developed the lighthouse system. They are the lighthouse authority for England, Wales, the Channel Islands and Gibraltar, under the Merchant Shipping Act, 1894, s. 634 (1) (*a*); the law as to lighthouses is now to be found in ss. 634-679 of the same Act, as amended by the Mercantile Marine Fund Act, 1898; and the expenses of the Trinity House are provided out of the General Lighthouse Fund, as to which see MERCANTILE MARINE FUND.

Light Railway. There is no statutory definition of this term, which really means something resembling the ordinary standard-gauge high-speed railway, but on much more modest lines. The Regulation of Railways Act, 1868, s. 27, permits the Board of Trade (now, as regards these matters, represented by the Ministry of Transport) to license a company already working an ordinary railway, to use any part of its line as a light railway; and (s. 28) it provides that on a light railway the speed of trains must not be more than twenty-five miles per hour, and that not more than eight tons' weight may be brought upon the rails by any one pair of wheels. This impliedly defines a light railway for the purposes of the Act of 1868, but that Act has been little used, and the statute of most importance is now the Light Railways Act, 1896, which contains no definition of a light railway. It has, however, been decided that, as regards the Act of 1896, light railways are to be divided into three classes —(1) those on land which has been acquired; (2) those (mostly propelled by electric power) on public roads; and (3) others, such as funicular railways. A purely urban tramway is not, but a tramway partly urban and partly rural may be, a light railway.

The Act of 1896 provides that a light railway may, without reference to Parliament, be authorised by order of the Light Railway Commissioners, subject to allowance or disallowance by the Ministry of Transport.

Light Railway Commission. This consists of three persons nominated by the Ministry of Transport to facilitate the construction and working of light railways in Great Britain (Light Railways Act, 1896, s 1). Two of them receive £1,000 a year (*ib.*); (Light Railway Commissioners (Salaries) Act, 1901, s. 1). The powers of the Commissioners were at first temporary (Act of 1896, s. 1 (8)), but they have been from time to time continued by various enactments. Thus the Expiring Laws Continuance Act, 1920, continued them to 31st December, 1921.

Limit; Limitation.—I. To limit an estate is to mark out the extreme period during which it is to continue, and the clause by which this is done in a conveyance, will, etc., is called a limitation. Thus, if I grant land to A for life, and after his death to B and his heirs, this is a limitation of a life estate to A, and of the remainder in fee to B. (See WORDS OF LIMITATION.) Hence a limitation is opposed to a condition or defeasance, which may put an end to an estate before the time fixed for its extreme duration, though the difference is sometimes one of form only; thus, if A devises land to his widow for life, on condition that she does not marry again, the same result is produced as if he devised it to her during widowhood, which is a collateral limitation (*infra*).

A conditional limitation (in the generic sense of the term) is where one estate is limited to end and another to commence on the doing of some act or the happening of some event. Thus, if I grant land to A until B returns from Rome, and on that event to C in fee; or if I grant land to A, provided that

when B returns from Rome it shall immediately vest in C in fee, in either case the limitation to C is a conditional limitation. But in the specific and more accurate use of the term, a conditional limitation is where an estate is limited to commence in defeasance of a preceding estate as opposed to a contingent remainder, which awaits the regular determination of the preceding estate; conditional limitations (in this sense) derive their name from their mixed nature: they so far partake of the nature of conditions as they abridge or defeat the estates previously limited, and they are so far limitations as, upon the contingency taking place, the estate passes to a stranger. The latter of the two examples given above of conditional limitations (in the generic sense) is a conditional limitation in this sense, the former being an instance of a collateral limitation (*infra*), or a determinable estate followed by a contingent remainder. See REMAINDER.

A collateral limitation is one which marks the extreme duration of an estate, and at the same time indicates an uncertain event, the happening of which will put an end to it before the expiration of that period. Thus, a limitation to a woman during widowhood, is a collateral limitation, because it gives her an estate for life, but makes it determinable on her marrying again. At common law, no estate could be limited in expectancy on the determination of an estate in fee simple, however limited or conditional it might be (see REVERTER; RIGHT OF ENTRY); but under the Statutes of Uses and Wills, such limitations may validly be created. A conditional or collateral limitation by way of use is sometimes called a shifting or springing use (see USE); when created by will it is called an executory devise. See EXECUTORY INTERESTS.

II. Limitation, as a measure of time, is a certain period prescribed by statute within which proceedings to enforce a right must be taken. This is of two kinds, namely (1) where on the expiration of the time the right itself is barred, as in the case of a person who has been out of possession of land for twelve years (Real Property Limitation Act, 1874, s. 1; Real Property Limitation Act, 1833, s. 34), although he may be ignorant of the fact that another is in possession; and (2) where on the expiration of the time the remedy is barred, but not the right; thus, in the case of a debt which has remained unpaid and unacknowledged for six years, the creditor's right to bring an action to recover it is gone (Limitation Act, 1623, s. 3; Statute of Frauds Amendment Act, 1828, s. 1), but the debt exists for other purposes: hence he can exercise a right of lien to recover it, but not a set-off or counter-claim, because that is in the nature of a cross-action.

The period allowed in each case runs from the time when the right of action accrued. (See ACCRUE.) In certain cases, however, persons under disability have an extended time allowed them, calculated from the time the disability ceased, provided the whole time allowed does not exceed a certain maximum period. The disabilities recognised for this purpose are—infancy, coverture, and unsoundness of mind. As to the absence abroad of a plaintiff or defendant, see ABSENCE BEYOND SEAS.

If the person liable to be sued gives the claimant an acknowledgment of his title, this has the effect of extending the period of limitation, so that it only runs from the acknowledgment, or the last acknowledgment, if there were several. See ACKNOWLEDGMENT.

The Judicature Act, 1873, s. 25, provided that no claim of a *cestui que trust* against his trustee for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by any Statute of Limitations, but the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, now provides that the Statutes of Limitation may be pleaded by any trustee or anyone claiming through him, "except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof."

The Statutes of Limitation do not apply to the engagements of a married woman; nor to the Crown (see NULLUM TEMPUS OCCURRIT REGI). And in the case of concealed fraud, the right of a person to bring an action to recover land or rents is deemed to have accrued at the time he discovered, or might have discovered, the fraud. The statutes do not interfere with the equitable doctrines of laches and acquiescence (q.v.).

The following are the periods allowed by the principal Statutes of Limitation:—

Statute.	Subject Matter.	Ordinary Limitation.	Extended Time for Persons under Disability.	Maximum Period.
3 & 4 Will. 4, c. 27 } 37 & 38 Vict. c. 57 }	Lands and rents.	Twelve years.	Six years.	Thirty years.
Same, and 7 Will. 4 & 1 Vict. c. 28.	Redemption of mortgage where mortgagee in possession.	Twelve years.	None.	
3 & 4 Will. 4, c. 27 } 37 & 38 Vict. c. 57 }	Moneys charged on land.	Twelve years.	None.	
Same.	Legacies.	Twelve years.	None.	
23 & 24 Vict. c. 38	Claims to estates of intestates.	Twenty years.	None.	
3 & 4 Will. 4, c. 27.	Arrears of dower or rent, or of money charged on land, or of interest on legacies	Six years.	None.	
Same.	Land or rent belonging to an ecclesiastical or eleemosynary corporation sole.	Two incumbencies and six years, or sixty years, whichever is longer	None.	
Same, and 6 & 7 Vict. c. 54.	Advowsons.	Three incumbencies or sixty years.	None.	One hundred years.
3 & 4 Will. 4, c. 42.	Bonds, covenants, recognizances, &c.	Twenty years.	Full period after removal of disability	
Same.	Penalties under statute	Two years.	Same.	
21 Jac. 1, c. 16, and 9 Geo 4, c. 14.	Simple contracts, torts to property, and actions on the case, except those mentioned below.	Six years.	Same.	
21 Jac. 1, c. 16.	Assaults and other torts to the person.	Four years.	Same.	
Same.	Slander.	Two years.	Same.	

Limitation of Liability. As to companies with limited liability, see COMPANY; CONTRIBUTORY.

A shipowner is not liable at all for loss of or damage to goods on the ship in certain cases, *e.g.*, when caused by fire (Merchant Shipping Act, 1894, s. 502), and is not liable for loss of life or injury to persons or things caused by or on board the ship in other cases beyond a certain amount for each ton of the ship's tonnage, namely, £15 per ton in respect of loss of life or personal injury, and £8 per ton for loss or damage to goods (*ib.* s. 503), except in the cases mentioned under YACHT. If the damages actually sustained exceed the amount thus arrived at, it is paid into Court, and distributed among the claimants in proportion to their claims. The claimants are said to prove against the fund in Court just as creditors prove against an insolvent estate. (See PROOF.) These limitations of liability only apply to cases where the loss or injury has not been caused by the shipowner's actual fault or privity (ss. 502, 503).

Where two vessels are injured by collision, and both are to blame, so that the enactment as to apportioning the liability for the damage applies (as to which see COLLISION), and one of them obtains a limitation of his liability under the M. S. Act, 1894, a set-off is allowed between the amounts of the respective damages. Thus, suppose the ships A and B come in collision, and both are equally to blame, and the half-damage payable by A is £14,000, and that payable by B is £2,000, then if there were no limitation of liability, A would be liable to B in the difference, namely, £12,000; and if ship A obtains a judgment

limiting its liability to £5,000, then ship B is entitled to set off the £2,000, against the £14,000, and to prove against the £5,000 for the balance of £12,000.

Limited. As to limited companies, see COMPANY. As to limited grants of administration and probate, see GRANT. As to limited partnerships, see PARTNERSHIP.

Lincoln's Inn. See INNS OF COURT.

Lincoln's Inn Fields. A square containing a public park, now under the control of the London County Council. It was an open space until 1735. The statute 8 Geo. 2, c. 26, was then passed to authorise the enclosure of the land and the levying of a rate, for its maintenance in proper order, from the houses forming the square in which the fields lay. This enactment was passed because the fields had become a receptacle for refuse and a resort of dangerous persons. It appears from the preamble to the Act that the Society of Lincoln's Inn had no proprietary interest in the land but were "interested in the benefit and advantage of the prospect and air of the said field."

Lincoln, Statute of. The statute 9 Edw. 2, st. 2.

Lindsey. See RIDING.

Lineal. See CONSANGUINITY; DESCENT; WARRANTY.

Linea recta semper præfertur transversali (*Co. Litt.* 10). (The direct line is always preferred to the collateral.) Thus the eldest son of a deceased eldest son is the heir of a grandfather rather than a surviving younger brother of the deceased eldest son.

Liquidated. A sum is said to be liquidated when it is fixed or ascertained. The term is usually employed with reference to damages (q.v.). See also WRIT OF SUMMONS.

Liquidation; Liquidator. Under the Bankruptcy Act, 1869, a debtor unable to pay his debts might present a petition stating that he was insolvent, and thereupon summon a general meeting of his creditors. If the meeting passed a special resolution declaring that the affairs of the debtor were to be liquidated by arrangement, and not in bankruptcy, the creditors appointed a trustee, with or without a committee of inspection, and the property of the debtor vested in the trustee and became divisible among his creditors, in the same way as if he had been made bankrupt. The subsequent proceedings generally followed the same course as those in an ordinary bankruptcy, except that the close of the liquidation and the discharge of the trustee were fixed by the creditors. The theory of the proceeding was that the affairs of the estate were brought under the immediate control of the creditors, without the delays and expenses caused by the supervision of the Court as in bankruptcy, but it cannot be said that this object was always attained.

Liquidation is not now known to our bankruptcy law, the only alternative to bankruptcy being an arrangement (q.v.) effected either privately or through the Court.

The liquidation of a company is now known as winding-up (q.v.): but the person who carries out the winding-up is known as a liquidator (q.v.).

Liquidator is a person appointed to carry out the winding-up of a company (see WINDING-UP). In the case of a voluntary winding-up, with or without supervision, one or more liquidators are appointed by the company (Companies (Consolidation) Act, 1908, s. 186); but where a company is being wound up subject to supervision, the Court may appoint additional liquidators (*ib.* s. 202). In the case of a compulsory winding-up by the Court a provisional liquidator may be appointed by the Court as soon as a petition for winding-up has been presented (*ib.* s. 149 (2)): the official receiver is usually the person appointed, but any other fit person may be selected (*ib.* s. 149 (3)). After the winding-up order is made, the official receiver is *ex officio* the provisional liquidator until he or some other person is appointed as liquidator (*ib.*).

The duties of a liquidator are to get in and realise the property of the company, to pay its debts, and to distribute the surplus (if any) among the members. The chief difference between a liquidator in a winding-up by the Court and a liquidator appointed in a voluntary winding-up is, that the former cannot as a rule take any important step in the winding-up without the sanction of the Court, while the latter is not so restricted, and also as of course does various things which, in a winding-up by the Court, are done either by the Court or by the liquidator under a general authority of the Court, *e.g.*, settling the list of contributories and making calls.

Lis alibi pendens="a suit pending elsewhere." The fact that proceedings are pending between a plaintiff and defendant in one Court in respect to a given matter is frequently a ground for preventing the plaintiff from taking proceedings in another Court against the same defendant for the same object and arising out of the same cause of action. As a general rule, the plaintiff is put to his election which suit he will pursue, and

the other is either dismissed, or the proceedings in it are suspended until the other is decided. This applies more especially where both proceedings are in British Courts. Where one proceeding is in a British and the other in a foreign Court, the Court will consider whether in one of them relief is obtainable which could not be obtained at all, or so easily, in the other.

Lis mota is existing or anticipated litigation. The phrase is used chiefly with reference to declarations or statements made under such circumstances that they are admissible in evidence notwithstanding the rule against hearsay evidence; thus a pedigree drawn up by a member of a family is admissible after his death as evidence of the facts stated in it, unless it can be shown that it was drawn up after litigation was in contemplation (*post litem motam*). The phrase is also used in questions of privileged communications. See CONFIDENTIAL COMMUNICATIONS; PRIVILEGE.

Lis pendens is a pending suit, action, petition for winding up a company, or the like. The old doctrine of *lis pendens* was that if property was in question in a suit or action, it could not be alienated during the pendency of the suit or action, even to a purchaser or mortgagee without notice. But by the Judgments Act, 1839, s. 7, no *lis pendens* binds a purchaser or mortgagee without express notice thereof, unless a memorandum giving a description of the person whose estate is intended to be affected thereby, and particulars of the suit, is registered in the Land Charges Department of the Land Registry (Land Charges Act, 1900): such registration was originally effected in the Common Pleas Registry Office, which afterwards was merged in the Central Office (q.v.). The registration of a *lis pendens* does not create an incumbrance on the property, but merely gives intending purchasers or mortgagees notice of the litigation.

The Crown Debts and Judgments Act, 1860, provides for the entering of a discharge of a *lis pendens* upon the filing of an acknowledgment of satisfaction.

Provision is made by the Lis Pendens Act, 1867, for vacating a *lis pendens* if the litigation is not prosecuted *bonâ fide*.

Literæ clausæ; Literæ patentes. See CLOSE ROLLS.

Literæ de coketto. See COCKET.

Literary Work; Literary Property. See COPYRIGHT.

Literate. One, not being a university man or a pupil of a theological college, who is up to the educational standard required for admission to orders of the Church of England.

Litigious. In ecclesiastical law, a church or benefice is said to be litigious when two patrons present to it by several titles, because then the bishop knows not under which presentation to admit, even if they both present the same clerk. See JUS PATRONATUS; QUARE IMPEDIT.

Litis contestatio. See CONTESTATION OF SUIT.

Litis nomen omnem actionem significat, sive in rem, sive in personam sit (*Co. Litt.* 292). (The word "*lis*" signifies every action whether it be *in rem* or *in personam*.) See IN REM.

Little Easter Sunday. The meaning is not definitely ascertainable, but it is understood to have been Low Sunday (q.v.).

Little Goe. A species of lottery (q.v.) mentioned in the Gaming Act, 1802, s. 2.

Littleton. Thomas Littleton seems to have been born about the beginning of the fifteenth century; was called to the bar at the Inner Temple, made serjeant-at-law 1453, judge of the Common Pleas 1466, knighted 1475, and died 23rd August, 1481. He wrote the celebrated "Treatise on Tenures," still quoted as an authority on the law of real property, and made valuable by the equally celebrated Commentary of Sir E. Coke. There is also a commentary on it by an unknown writer, which is pronounced by Mr. Hargrave to be "a very methodical and instructive work."

Liturgy, The. As regards the Church of England, this means the Prayer Book (q.v.).

Liverpool Court of Passage. See COURT OF PASSAGE.

Livery. Formerly when an infant heir of land had been in ward to the king by reason of a tenure *in capite ut de coronâ*, he was obliged on attaining twenty-one to sue livery, that is, to obtain delivery of the possession of the land, for which (in the case of a general livery) he paid half-a-year's profit of the land. Livery was either general, that is, in the ordinary form, which had several disadvantages, or special, that is, granted by the king as a matter of grace, by which those disadvantages were avoided and for which the heir had to pay more. As to the mode by which a tenant *in capite ut de honore* obtained his lands, see OUSTERLEMAIN.

See GUARDIAN; KNIGHT'S SERVICE; CAPITE, IN; COMPANIES, CITY.

Liveryman. A member of such of the City Companies as are Livery Companies. See COMPANIES, CITY.

Livery of Seisin is a public solemnity, or "overt ceremony," which was formerly necessary to convey an immediate estate of freehold in lands or tenements: that is, an estate of freehold in possession, or an estate of freehold only kept out of possession by a chattel interest (*i.e.*, a term of years) preceding it. Thus, if before the Statute of Uses a tenant in fee wished to convey his estate to another, he could only do so by a feoffment, which operates by livery of seisin. (See FEOFFMENT.) At the present day simpler means of conveyance are usually available, and livery of seisin is practically obsolete.

Livery of seisin is a transfer of the feudal possession of land, and it is therefore essential that it should be made either in the presence or with the assent of all persons having a right to the possession as against the feoffor, such as lessees for years.

There are two kinds of livery of seisin, viz., a livery in deed and a livery in law. A livery in deed is where the feoffer is on the land to be conveyed, and verbally requests or invites the feoffee to enter, or formally hands to him any object, such as the ring or hasp of the door of the house, or a branch or twig of a tree, or a turf of the land, and declares that he delivers it to him by way of seisin of all the lands and tenements contained in the deed of feoffment. "A livery in law [or livery within the view] is," as Coke explains, "when the feoffor saith to the feoffee, being in view of the house or land, 'I give you yonder land to you and your heires, and go enter into the same, and take possession thereof accordingly,' and the feoffee doth accordingly in the life of the feoffor enter, this is a good feoffment." See HEREDITAMENT.

Living. See BENEFICE. As to living memory, see MEMORY.

Lloyd's. A number of merchants, shipowners, underwriters, and insurance brokers were accustomed to meet, about the time of James II., in a coffee-house in Tower Street, in the City of London, kept by one Lloyd. This informal assemblage gradually formed itself into the association through which the insurance of the British mercantile marine is effected, and which furnishes the commercial world with a complete record, in the well-known publication entitled *Lloyd's List*, of daily events in the shipping world, such as casualties and sailings. Lloyd's Signal Station Act, 1888, empowered Lloyd's to establish shipping signal stations with telegraphic communication; and the Derelict Vessels (Report) Act, 1896, requires British ships to report to Lloyd's all derelicts which they may observe. But Lloyd's was made by itself, not by Parliament, although Parliament did in fact incorporate and regulate it by Lloyd's Act, 1871 (34 & 35 Vict. c. xxi.). Many of the usages recognised by Lloyd's as obtaining between shipowners and underwriters have been recognised by the Courts also.

The Insurance Companies Act, 1909, s. 28 (2), excludes members of Lloyd's from the operation of that Act, provided that they comply with the requirements of the 8th Schedule to the Act in so far as those requirements relate to the class of business transacted. Insurance at Lloyd's, it should be noted, can be effected to cover loss arising not merely from maritime disasters, but from almost every conceivable event, such, for instance, as the birth of twins.

Lloyd's Bonds are instruments which were invented about the middle of the last century by Mr. J. H. Lloyd, a member of the bar. They are intended to assist railway companies in carrying out their schemes, by indirectly enlarging their borrowing powers, which are limited by the Acts creating them, the Railway Regulation Act, 1844, s. 19, and the Companies Clauses Consolidation Act, 1845. A Lloyd's bond is merely an admission under seal of a debt due from some railway company to the party in whose favour it is executed, with a covenant to pay the debt with interest. "An account stated under seal with a covenant to pay," as Mr. Justice Blackburn put it in 1864. The obligee is thus enabled to go into the market and obtain cash upon the faith of these instruments. They are generally used (and can only legally be used) for paying contractors and others who have done work or supplied materials, etc., for the company, and cannot be given for a mere loan of money to the company.

Lloyd's Register. This is the popular title of *Lloyd's Register of British and Foreign Shipping*, which is published annually by the Society of Lloyd's Register, an unincorporated society which has existed in its present form since 1834. The society, which is quite distinct from "Lloyd's," is voluntarily maintained by those interested in shipping, and is managed by a committee consisting of shipowners, merchants, and underwriters. The *Register* is an alphabetical list of ships, classified according to materials, mode of construction, state of repair, etc. The classification is indicated by letters and numerals—such as "100 A1," which are those used for the highest class. The society publishes rules in accordance with which vessels must be con-

structed in order to be classed in the *Register*.

The society is officially recognised: see, for instance, the Merchant Shipping Act, 1894, ss. 429, 443.

Lloyd's Register is quite distinct from *Lloyd's List*, as to which see LLOYD'S.

Load-line. An imaginary line along the side of a ship below which the vessel must not sink when loaded. It is indicated by a circular twelve-inch disc painted amidships on each side with a horizontal line eighteen inches long through the centre of the disc; and the load-line is the prolongation fore and aft of this horizontal line. Every vessel, other than a fishing vessel or a sailing coaster of less than eighty tons register or a yacht, must be so marked (Merchant Shipping Act, 1894, s. 438; Merchant Shipping Act, 1906, s. 7). Any vessel so marked which is loaded so that she is, when in salt water, below her load-line, is to be deemed unsafe, and may be detained (Merchant Shipping Act, 1894, s. 439).

These enactments apply to foreign ships in British ports except where the King in Council has exempted them because the laws of their countries are as effective as ours on the point (Merchant Shipping Act, 1906, s. 1; Merchant Shipping Act, 1894, s. 445); and French, Dutch, and Swedish ships have been so exempted (see S. R. & O., 1909, No. 1407; ditto, 1910, Nos. 671 and 1114).

The exemption extended to sailing coasters under eighty tons has been extended (S. R. & O., 1907, Nos. 349 and 481) to steamers of various kinds of less than eighty tons register when not carrying cargo.

Load-manage. See LODEMANAGE.

Loadsman. Jacob states that a loadsman was one who, after a ship had been brought to a port by a pilot, took the ship to her berth in the port.

Loan Commissioners. In the Public Works Loans Act, 1875 (see s. 4) this expression means the Public Works Loan Commissioners (q.v.).

Loan Society. A society formed in order to establish a fund for the purpose of making to the industrious classes loans repayable by instalments: see the Loan Societies Act, 1840, s. 3, which regulates the business of such a society.

Local Action. See VENUE.

Local Authority. This expression is of modern origin. In the definition clauses of dozens of Acts passed during the last seventy years, it is declared to mean, for the purposes of each of those Acts, the persons or bodies who respectively give effect to the Acts in various areas. Thus s. 4 of the Public Health Act, 1875, defines it as meaning urban sanitary authority and rural sanitary authority.

For the purposes of the Elementary Education Act, 1876, the expression "local authority" meant the school board and the school attendance committee (Elementary Education Act, 1876, s. 7 (2)). Under the Education Act, 1902, s. 5, the powers and duties of the school boards and the school attendance committees (see those titles) were vested in the local education authorities (q.v.).

In 1908 it was decided that neither reporters, nor the public at large, nor even the burgesses, could attend the meetings of a borough council, county council or district council, unless the council saw fit to admit them. In consequence of this decision the Local Authorities (Admission of the Press to Meetings) Act, 1908, s. 1, enacted that representatives of the Press should be admitted to every meeting of a local authority except in so far as a majority of the members present should decide that, in view of the business being or about to be transacted, the exclusion of reporters is advisable in the public interest. The Act (s. 2) defines "local authority" as meaning (1) a county council, a county borough council, a borough urban district council, a rural district council, a parish council, a joint committee or board of any such councils exercising the powers of its constituent councils, or a parish meeting under the Local Government Act, 1894; (2) an education committee, or joint education committee dealing with matters not requiring to be submitted to any council for approval; (3) a board of guardians, a joint committee under the Poor Law Act, 1879, s. 8, or the board of management of any school or asylum district under the Acts for the relief of the poor; (4) a central body or distress committee under the Unemployed Workmen Act, 1905; (5) a water board; (6) a rating authority. As regards the public at large, and even the burgesses, the Act left the law as it had previously been.

The annual meeting of a parish council is open to the public (Local Government Act, 1894, Sch. I., Pt. II., r. 13).

Local Boards of Health were (1) authorities formed under the Local Government Acts (q.v.) for carrying out in their respective districts the provisions of those Acts; (ii) authorities formed by order of the Local Government Board under s. 272 and Sch. II. of the Public Health Act, 1875, to be sanitary authorities for the execution of the provisions of that Act Under the Local Government Act, 1894, s. 21,

diction of the Court of Lodemanage, which was a branch of the Court of Admiralty of the Cinque Ports (q.v.). The property of the Court of Lodemanage and of the Society of Cinque Ports Pilots was transferred to the Trinity House by the Pilotage Law Amendment Act, 1853, s. 10; and s. 4 of the same Act made the Cinque Ports pilots subject to the same rules, etc., as Trinity House pilots.

Lodger; Lodgings. A lodger is a person who occupies rooms in a house of which the general possession remains in the landlord, as shown by the fact that he retains control over the street or outer door. If, therefore, a house is divided into sets of rooms, each of which has an outer door opening on to a common staircase, while the entrance to that staircase either has no street-door, or has a door under the control of a porter acting as the servant of the collective tenants, then each set of rooms is not a lodging, but a separate hereditament, and each tenant has a rateable occupation. See RATEABLE.

Goods belonging to a lodger are exempt from distress for rent owing by the lodger's landlord to the superior landlord. To entitle himself to this exemption, the lodger must serve on the superior landlord a declaration, with an inventory of the goods distrained on, stating that the goods are his, and undertaking to pay to the landlord any rent due or to accrue from the lodger to his immediate landlord (Law of Distress Amendment Act, 1908, s. 1).

In every parliamentary constituency, a person who had occupied lodgings, being, if unfurnished, of the yearly value of £10, for twelve months preceding the last day of July in any year, was entitled to be registered as a voter at parliamentary elections; but this "lodger-franchise" was abolished in 1918. See ELECTORAL FRANCHISE.

The Acts relating to the public health contain provisions for the registration, inspection, and regulation of common lodging houses. See the Public Health Act, 1875, ss. 75-90; and the Public Health Acts Amendment Act, 1907, ss. 69-75; and, as regards London County, see the Common Lodging Houses Act, 1851, and the Common Lodging Houses Act, 1853. The Public Health (London) Act, 1891, s. 94, deals with lodgings, not being in common lodging houses, within London County; as regards such lodgings elsewhere, see s. 90 of the Public Health Act, 1875, and the Housing of the Working Classes Act, 1885, s. 8.

See COMMON LODGING HOUSE.

Log. A record, called "the official log," of happenings in and to a ship (every entry in which is to be made as soon as possible after the event to which it relates), which must be kept in every ship other than ships trading only between ports in Scotland, pleasure yachts, or ships belonging to lighthouse authorities. See the Merchant Shipping Act, 1894, ss. 239-243, 262 (j).

Logating. "Logating in the field" is mentioned in the preamble of the statute 33 Hen. 8, c. 9, as one of "sundry new and crafty games" with which men occupied themselves instead of practising archery. Loggat was a game in which a stake was fixed in the ground and the players threw from a distance "loggats" (spherical masses of wood with long handles), which they tried to leave as near the stake as possible.

London. The area within a radius of about six miles of Charing Cross is colloquially described as London. In law, however, there is no such entity as London.

The administrative county of London was created by the Local Government Act, 1888, ss. 40 (1), 100, which provided that the metropolis, that is to say, the City of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent statutes, should form the administrative county of London. This is approximately the area popularly known as London. The City of London is included only for certain administrative purposes (Act of 1888, s. 40 (2)), but can be completely merged in the administrative county when and if the city authorities so desire (*ib.*, s. 40 (3)). The administrative county originally contained about 121 square miles. Now the area is only about 117 square miles, the boundaries having been altered by transfers, under the London Government Act, 1899, of areas to and from so much of the ancient counties of Middlesex, Kent, and Surrey as remained after the administrative county had been carved out of those counties in 1888. The administrative county of London is the area governed by the London County Council, which, like the county, was created by the Act of 1888. (See COUNTY; COUNTY COUNCIL.) The whole of the administrative county is included in the metropolitan police district (q.v.).

The City of London contains a little more than a square mile, the precise area being 671 acres. The government of the city remains much as it was in the Middle Ages. It is vested in the Lord Mayor, the aldermen, the common councillors or councilmen, and the City Companies.

The title of Lord Mayor has existed from 1354. Before that date, as from, at any rate, 1189, the office had existed under the title of Mayor. The Lord Mayor is selected by the Court of Aldermen (*infra*) out of the two aldermen nominated for the office by the Court of Common Hall (*infra*).

The office of alderman—in its present, as distinguished from its Anglo-Saxon, meaning—has existed from, at latest, the thirteenth century. There are twenty-six aldermen, one of them being the Lord Mayor, each of whom represents one of the wards. The office is for life, except in case of insolvency, conviction of crime, or other good cause (17 Rich. 2, cc. 11, 13; 12 & 13 Vict., c. cxiv, s. 9). Each of them is elected by the constituents of his ward, except the alderman of the Ward of Bridge Without, or Southwark, who is always the senior alderman, there being no electors, and consequently no election in that ward. Each candidate for aldermanship must be a freeman of the city.

The Court of Aldermen consists of all the aldermen, presided over by the Lord Mayor or his *locum tenens*, thirteen being a *quorum*.

The Court of Common Council is the popular title of the "Court of the Lord Mayor, Aldermen, and Commoners of the City of London in Common Council assembled," which dates from, at any rate, 1275. It consists of, besides the Lord Mayor and the aldermen, two hundred and six common councillors, the latter being elected annually on December 21-22 by the ward-motes of the twenty-five wards which (see *ante*) have constituencies. The administration of the city is in the hands of the Court of Aldermen and the Court of Common Council. There is also a third municipal body—the "Meeting or Assembly of the Mayor, Aldermen and Liverymen of the several Companies of the City of London in Common Hall assembled," generally called the Court of Common Hall. This court consists of the Lord Mayor—or, in his absence, one of the sheriffs—four aldermen at the least, the sheriffs, and all the good freemen of the city who are liverymen of the City Companies: it nominates two aldermen for the office of Lord Mayor (see *ante*), and elects the sheriffs and certain other city officers, but takes no further part in the administration of the city.

See BOROUGH; CENTRAL CRIMINAL COURT; CHAMBERLAIN; COMPANIES, CITY; FOREIGN ATTACHMENT; GUILDHALL SITTINGS; MAYOR'S COURT; MIDDLESEX; RATIONABILE PARTE BONORUM, DE.

London Commissioners to Administer Oaths in Chancery. Under the statute 16 & 17 Vict. c. 78, s. 2, the Lord Chancellor was empowered to appoint solicitors whose offices were within ten miles of Lincoln's Inn Hall—the habitation of the old Court of Chancery—to administer oaths, etc., in Chancery. This enactment was repealed by the Commissioners for Oaths Act, 1889. See COMMISSIONERS FOR OATHS.

London County Bills. Bills payable not less than three nor more than twelve months after date issued under a warrant sealed by the London County Council: each of them is sealed with the seal of the Council, and is attested by the clerk. See the London County Council (Finance Consolidation) Act, 1912, (2 & 3 Geo. 5, c. cv.), ss. 35, 38.

London Court of Bankruptcy. This Court was established by the Bankruptcy Act, 1869. It had jurisdiction throughout the City of London and the Metropolitan County Court districts. The Judicature Act, 1873, s. 16, transferred its jurisdiction to the Supreme Court. See BANKRUPTCY COURT.

London, Port of. The port of London includes all the water lying between Teddington, in Middlesex, and an imaginary straight line "drawn from the pilot mark at the entrance of Havengore Creek, in the county of Essex, to the land's end at Warden Point, in the Isle of Sheppey, in the county of Kent," but does not include any part of the river Medway, which is within the jurisdiction of the Medway Conservators, or any part of the river Swale, or any part of the river Lea, which is within the jurisdiction of the Lea Conservancy Board, or any part of the Grand Junction Canal (Port of London Act, 1908, ss. 490-5). The Port of London Act, 1908, put the port under the authority of a port authority thereby created (s. 1), and transferred to the port authority the undertakings of the London and India Docks Company, the Surrey Commercial Dock Company, and the Millwall Dock Company (s. 4).

London Sessions. Each of the twelve annual sittings of the Central Criminal Court (q.v.) is known as a session (see the Central Criminal Court Act, 1834, s. 15); and the sittings of the Court are sometimes called the London Sessions.

London Sittings. The Guildhall Sittings (q.v.).

Longa possessio parit jus possidendi et tollit actionem vero domino (*Co. Litt.* 110). (Prolonged possession produces the right of possession, and takes away the right of action from the true owner.)

Long Quinto. There are two Year Books

5 Edw. 4. The longer of the two used to be known as the Long Report or Long Quinto.

Long Terms. See ENLARGEMENT.

Longum tempus et longus usus, qui excedit memoriam hominum, sufficit pro jure (*Co. Litt.* 115). (Long time and long use, which exceeds the memory of man, suffices in law.) See MEMORY.

Long Vacation. See VACATION.

Lopwood is a right in the inhabitants of a parish within a manor to lop for fuel at certain periods of the year the branches of trees growing upon the waste lands of the manor. The true nature of the right is not quite clear, and it seems that it can only be created by Crown grant or Act of Parliament. See PROFIT À PRENDRE; PRESCRIPTION.

Loquela. Imparlance (q.v.).

Loquela sine die. This appears to have meant an indefinite adjournment (q.v.).

Lord; Lordship. In the law of real property, a lord is a person of whom land is held by another as his tenant. The relation between the lord and the tenant is called tenure (q.v.), and the right or interest which the lord has in the services of his tenant is called a lordship or seignory (q.v.).

If before the Statute of Quia Emptores (q.v.), A conveyed land to B to hold of himself (A), and B conveyed it to C to hold of himself (B), A would be called lord paramount, B mesne lord, or "mesne," and C tenant paravail (see MESNE). The Statute of Quia Emptores having abolished subinfeudation, no person can now create a lordship (see SUBINFEUDATION). The only lords of any importance at the present day are lords of manors (see MANOR). But the Crown is sovereign lord, or lord paramount, of all the land in England, and in that character sometimes becomes entitled to land by escheat (q.v.).

See HOUSE OF LORDS; VERY LORD; LORD IN GROSS; DUKE; MARQUIS; EARL.

Lord Chamberlain. See CHAMBERLAIN.

Lord Chancellor. See CHANCELLOR.

Lord Chief Justice. See JUSTICE.

Lord Great Chamberlain. See CHAMBERLAIN.

Lord High Admiral. See ADMIRAL.

Lord High Steward. When a person is impeached, or when a peer is tried on indictment for treason or felony before the House of Lords, one of the lords is appointed Lord High Steward, and acts as speaker *pro tempore* (see IMPEACHMENT; CERTIORARI). If a peer is indicted for treason or felony while the House of Lords is not sitting, the indictment is removed into the Court of the Lord High Steward, which is a Court instituted by commission from the Crown, summoning all the peers of Parliament; in it the Lord High Steward is sole judge on points of law, and the peers summoned are triers and judges of fact only. This Court, which has not sat since 1688, is, of course, quite distinct from the Court of the Lord Steward of the King's Household (q.v.).

The office of Lord High Steward was not at first hereditary, but at an early period it became so in the family of the Earls of Leicester. When Simon de Montfort, who held that title, was killed in 1265, it, and his other honours, were forfeited to the Crown. After various regrants, it finally merged in the Crown in 1407; and since then there has been no Lord High Steward, except when an appointment has been made *pro hac vice*, that is to say, for a special occasion. The appointment is made, upon an address from the House of Lords requesting that a High Steward be appointed, by commission under the Great Seal. When the peers have assembled for a trial—the last was that of Earl Russell for bigamy in 1901—the commission is read by the Clerk of the Crown in Chancery, and the High Steward is then presented with his staff of office by the heralds. At the conclusion of the proceedings, the High Steward breaks his staff and declares the commission dissolved, whereupon his office determines.

Lord High Treasurer. See TREASURY.

Lord in Gross. He who was lord otherwise than in respect of a manor: thus the King, as lord paramount of all the country, was formerly described as lord in gross. See MANOR.

Lord Keeper, or Keeper of the Great Seal, was originally another name for the Lord Chancellor. (See CHANCELLOR.) After Henry II.'s reign the offices were sometimes divided: now there cannot be a Lord Chancellor and Lord Keeper at the same time, for by the statute 5 Eliz. c. 18, they are declared to be the same office. Down to 1760 the Great Seal was sometimes held by a Lord Keeper instead of by a Lord Chancellor; but since that date there has been no Lord Keeper.

Lord Lieutenant. The office of "lieutenants of counties" was created about the reign of Henry VIII., or one of his children (some say in that of Edward VI.), for the purpose of having a representative of the Crown in each county, to keep it in military order. For this purpose they had the power of raising militia. Formerly, they had the command of the militia and other auxiliary forces, and ap-

pointed their officers, but by the Regulation of the Forces Act, 1871, the jurisdiction of lieutenants of counties in these respects was transferred to the Crown. Their connection with the military forces of the Crown has, however, revived by the Territorial and Reserve Forces Act, 1907, which (see s. 1 (3) (c)) gives the lord lieutenant the option of becoming president of the county association formed under that Act for the purpose of administering the military forces of the Crown (other than the regulars and their reserves) within the county. Subject to the approval of the Crown, they nominate persons for the lowest rank of officer in the county territorial units (*ib.*, s. 8). They have also the power of recommending persons for the commission of the peace; and the Crown usually, though not invariably, gives effect to their recommendations. The appointment to the office is made by the Crown, under the Militia Act, 1882, s. 29. The lord lieutenant, with the consent of the Crown, appoints as deputy lieutenants twenty persons having places of residence within the county, or within seven miles thereof, who are "shown to the satisfaction of a Secretary of State to have rendered worthy service as a member of, or in a civil capacity in connection with, His Majesty's naval, military or air forces," or such number, being less than twenty, as there may be of such persons (Militia Act, 1882, s. 30 (2); Deputy Lieutenants Act, 1918, c. 19, s. 1). He may, with the consent of the Crown, appoint one of such deputy lieutenants to act for him as vice-lieutenant during his absence, sickness, or other inability to act (Militia Act, 1882, s. 32).

Recruits for the Territorial Army may be attested by any lord lieutenant or deputy lieutenant (Territorial and Reserve Forces Act, 1907, s. 10 (2)).

There are separate lords lieutenant for each of the ridings of Yorkshire; and there is also a separate lord lieutenant for the district known as the town and county of Haverfordwest, which is part of Pembrokeshire.

In the City of London the Lord Mayor, although not entitled the Lord Lieutenant, is *ex officio* the head of the city lieutenancy, and recommends to the Crown the names of persons to fill vacancies therein.

See LIEUTENANCY, COMMISSION OF.

Lord Mayor's Court. See MAYOR'S COURT OF LONDON.

Lord President of the Council. The President of the Privy Council (q.v.). The office is held by such person, being a member of one House of Parliament or the other, as the King in Council, from time to time, verbally declares to be the Lord President of the Council. It is of cabinet rank, and carries a salary of £5,000 a year.

Lord Privy Seal. Before the Reformation this office was usually held by a Churchman. Since then it has usually been held by lay peers. Until recent times the Privy Seal had to be affixed to documents, especially letters patent, which were to pass the Great Seal (q.v.). But the Patents, Designs and Trade Marks Act, 1883, made the use of anything except the seal of the Patent Office unnecessary for letters patent: the Crown Office Act, 1877, authorised the use of a wafer Privy Seal instead of the actual Privy Seal: the Great Seal Act, 1884, s. 3, altogether abolished the use of the Privy Seal: and now the Lord Privy Seal has, as such, no official duties whatever to discharge unless he be a peer, in which case he is *ex officio* a member of the House of Lords Offices Committee, a body which looks after the domestic arrangements of that House. The office carries cabinet rank and a salary of, at present, £5,000 a year, and of recent years has generally been conferred upon some politician whom it is desired to include in the Cabinet without his holding an office involving official functions. Thus, down to March, 1921, Mr. Bonar Law was Leader of the House of Commons—which is not a recognised office, but involves much work—and also Lord Privy Seal. The office had been without salary down to 1900, when Lord Salisbury assumed it—with a salary of £2,000—on his becoming Prime Minister (q.v.), which was not then a recognised office, and which carried no salary. It carries none even now.

See CLERKS OF THE PRIVY SEAL.

Lords' Act. The popular title of the Debtors Imprisonment Act, 1758 (32 Geo. 2, c. 28).

Lords Justices. As regards Ireland, the Lords Justices were commissioners for executing the office of Lord Lieutenant who were always sworn in during a vacancy in that office and during any absence—unless it were very brief—from Ireland of the Lord Lieutenant. They could not be Roman Catholics (Roman Catholic Relief Act, 1829, s. 12). No provision was made in the Government of Ireland Act, 1920, for the appointment of Lords Justices.

As regards England, it appears from the Commons Journals, Vol. 44, pp. 38-39, that from 1253 Lords Justices had, from time to time, been appointed: these were frequently individual barons or individual members of the royal family; the Earl of Pembroke, for in-

stance, being appointed in 1285 by Edward I., and John, Duke of Bedford, being appointed in 1421 by his brother Henry V. Since the Revolution of 1688 commissioners have been appointed from time to time under the Great Seal to exercise, during the absence of the Sovereign from the realm, such of the royal functions as are delegated to them. They have always been chosen from amongst such peers, spiritual or temporal, as are members of the Privy Council. See REGENCY.

Lords Justices of Appeal. The designation of the five ordinary judges of the Court of Appeal. See SUPREME COURT.

Lords of Appeal. See APPELLATE JURISDICTION ACTS.

Lords of Appeal in Ordinary. These are persons appointed by the King for the purpose of aiding the House of Lords in the hearing and determination of appeals; they must have held some high judicial office for two years, or have been practising barristers or advocates for at least fifteen years; they are barons for life, and are entitled to sit and vote in the House of Lords during their tenure of office (Appellate Jurisdiction Act, 1876, s. 6). High judicial office means the office of Lord Chancellor of Great Britain or Ireland, or of judge of the superior Courts of Great Britain or Ireland (*ib.*, s. 25). There are six Lords of Appeal in Ordinary, two of them being appointed under s. 6 of the Act of 1876, two under s. 14 of the Appellate Jurisdiction Act, 1887, and two under s. 1 of the Appellate Jurisdiction Act, 1913. They are *ex-officio* members of the Court of Appeal, but need not sit therein unless at the request of the Lord Chancellor they consent so to do (Act of 1913, s. 2).

Lord Steward of the King's Household. This is an office quite distinct from that of the Lord High Steward (q.v.). He is mentioned in the statute 24 Hen. 8, c. 13; his title was changed to that of Great Master of the Household in 1540, but the title of Lord Steward of the King's Household was revived by the statute 1 Mar., c. 4, and has ever since been in use. He originally presided over the now-abolished Court of the Lord Steward of the King's Household (q.v.), and was, in theory, one of the two judges of the Palace Court (q.v.); he still appoints the Coroner of the King's Household (see CORONER); but his main function from the beginning was, and still is, to supervise the servants and the arrangements of the Royal Household, as regards all matters not entrusted to the Master of the House (q.v.), or the Lord Chamberlain (q.v.), or not relating to the Chapels Royal. The office is not hereditary: it is always held by a peer, who is always a member of the political party which is in office for the time being.

See BOARD OF GREEN CLOTH.

Lord Treasurer. The full title of this officer was the Lord High Treasurer and Treasurer of the Exchequer. As Lord High Treasurer, he was appointed by receiving a white staff from the king; as Treasurer of the Exchequer, he was appointed by letters patent. The office, which dates from the earliest Norman period, was never hereditary. It was in early times always held by some one person; in 1612 it was put in commission; from then until 1714 it was sometimes held personally and was sometimes in commission; and since 1714 it has always been in commission. The Commissioners constitute the Treasury Board, which never meets now, but which used to meet, in gradually diminishing numbers, until the middle of the last century. It now consists of the First Lord of the Treasury (usually either the Prime Minister or the Leader of the House of Commons) who exercises as regards finance only what may be termed an appellate jurisdiction, the Chancellor of the Exchequer (who is for all practical purposes the Lord Treasurer), a couple of Junior Lords, a Patronage Secretary (who, with the assistance of the Junior Lords, acts as party whip for the Government), and a Financial Secretary, all of whom are members of Parliament.

See TREASURY.

Lord Warden. See CINQUE PORTS.

Lorimers. One of the City Companies, anciently composed of makers of bits, bridles and spurs. See the statute 1 Rich. 2, c. 12.

Loss. In the law of marine insurance, the losses which arise from the various perils insured against may be either total or partial; they are total when the subject-matter of the insurance is wholly destroyed, or injured to such an extent as to justify the owner in abandoning to the insurer, and partial when the thing insured is only partially damaged, or where, in the case of an insurance on goods, the owner of them is called upon to contribute to a general average. Total losses may again be divided into actual and constructive total losses. Actual total losses arise where the ship or cargo is totally destroyed or annihilated, or where they are placed by any of the perils insured against in such a position that it is wholly out of the power of the assured to procure their arrival. Thus, where by means of a peril insured against, a ship founders or is actually destroyed, or even

where she is so much injured that she becomes a wreck, the loss is total and actual, although the form of the ship may still remain; and in these cases the assured may recover for a total loss without abandonment. Losses are constructively total when the subject-matter of the insurance, although still in existence, is either actually lost to the owners or beneficially lost to them, and notice of abandonment has been given to the underwriters. Thus, where the ship, although existing as a ship, is captured or laid under an embargo, and has not been recaptured or restored before action brought, so that she is lost to the owners; or where she is so damaged by a peril insured against as to be innavigable, and is so situated that either she cannot be repaired at the place in which she is, or cannot be repaired without incurring an expense greater than her value when repaired, the assured may abandon and treat the loss as total.

See ABANDONMENT OF SHIP; INSURANCE; POLICY.

As to loss of negotiable instruments, see ACCIDENT.

Lost Grant. Before the Prescription Act, 1832 (q.v.), a claim to an easement could in theory only be supported either where it had been enjoyed from time immemorial, or where the claimant could prove that it had been created by a deed of grant. But after the statute 21 Jac. 1, c. 16, had limited the time for bringing possessory actions for land to twenty years, the Courts adopted the same period as sufficient to give rise to an easement, on the presumption that it had been created by a deed of grant which had been lost, "and juries were directed so to find in cases in which no one had the faintest belief that any grant had ever existed, and where the presumption was known to be a mere fiction." This presumption of a lost grant has been deprived of its importance in the case of most easements by the Prescription Act, but it is not altogether obsolete. See SUPPORT.

Lost or not Lost are words inserted in a maritime policy of insurance to prevent the operation of the rule that if a ship is lost at the time of insurance, the policy is void, although the assured did not know of the loss. The words operate to make the underwriter liable, even where the subject-matter of insurance had not vested in the assured at the time of the occurrance of the loss (Marine Insurance Act, 1906, s. 6 (1)), but not where, at the time that the assurance was effected, the assured knew of the loss and the insurer did not (*ib.*); for instance, if a merchant, having bought goods at sea, were to insure them "lost or not lost," the policy would entitle him to recover from the underwriter in respect of a loss sustained during the voyage, but before the purchase and without the knowledge of the merchant when he insured. See INSURANCE; POLICY; LOSS.

Where the subject-matter of the insurance has arrived in safety before the insurance was effected, the "lost or not lost" clause makes the premium non-returnable unless the insurer, when effecting the policy, knew of such safe arrival (Marine Insurance Act, 1906, s. 84 (3) (*b*)).

Lot; Lot Mead. A lot is the same thing as a dole (q.v.).

A lot mead or lot meadow is an open field divided into lots or doles. See DOLE; OPEN FIELDS.

These lot meads seem to have originated in certain manors where a piece of meadow land was periodically allotted to the freehold tenants of the arable land in the manor.

See INHERITANCE; SEVERALTY.

Lot and Cope. Duties payable to the Crown in respect of lead mines in the High Peak, Derbyshire. Lot was every thirteenth dish of lead: cope was a payment of sixpence a load.

Lotherwit. The same (see *Termes de la Ley*) as LAIRWITE (q.v.).

Lottery. A distribution of prizes by lot or chance. A sweepstake on the Derby, or a raffle for a watch, is obviously a lottery. So also is the sale of, for instance, packets of tea containing each a ticket entitling the purchaser to some one or other of a number of prizes of different values. But the giving of a prize for the selection of, say, the horses that run first, second and third in the Derby, is not a lottery, the result being determined not entirely by chance, but also by the skill and knowledge with which the horses may be selected.

A lottery carried on in accordance with the provisions of the Art Union Act, 1846, is legalised by that Act. With this exception, all lotteries come within the Lotteries Act, 1699, which (see s. 1) declares them to be "common and public nuisances": the effect of this is that an indictment at common law will lie. And under s. 2 of the same Act any person who publicly or privately "exercises" or keeps any lottery is guilty of an indictable misdemeanour.

Other enactments directed against lotteries are the Lotteries Act, 1710, s. 57; the Lotteries Act, 1721, ss. 36, 37; the Lotteries Act,

1722, s. 4; the Lotteries Act, 1732, s. 29; the Gaming Act, 1738, ss. 3, 4; the Gaming Act, 1802, ss. 1-7; the Lotteries Act, 1806, s. 59; the Lotteries Act, 1823, ss. 19, 37-39, 41, 59, 60-62, 67; the Lotteries Act, 1836, s. 1; and the Lotteries Act, 1845, ss. 3, 4.

Prosecutions are most usually brought under s. 2 of the Gaming Act, 1802, which provides for the summary conviction of a defendant; but it is to be noted that the offence under that section is to "publicly or privately keep" a place for a lottery; and it has been held that the offence is not committed by using a room only on one occasion for the drawing of the tickets in a lottery.

Down to 1823, when the Lotteries Act, 1823, was passed for "granting to His Majesty a sum of money to be raised by way of lottery," it had been usual to raise, from time to time, money for public purposes by way of lotteries; but since then there has been no such lottery.

The sale of tickets for any foreign lottery is punishable summarily under the Lotteries Act, 1823, s. 41, and the Vagrancy Act, 1824, ss. 4, 21.

Loughborough's (Lord) Act. Formerly a popular title of the Accumulations Act, 1800. See ACCUMULATION.

Low Sunday. The Sunday next after Easter Sunday.

Lubbock's Act. A popular title of the Bank Holiday Act, 1871. See BANK HOLIDAY.

Lucid Interval is an interval of sanity separating two attacks of insanity. Perfect sanity is not required to constitute a lucid interval in the sense in which the phrase is now used; it is sufficient that the lunatic knows what he is doing, and that his act is not affected by a delusion (q.v.), and that he has capacity sufficient for the doing of a particular act. An act done during a lucid interval is as valid, and involves the same liabilities and responsibilities, as the act of a sane man. See LUNATIC.

See HOMO POTEST, etc.

Lunacy means either

I. The condition or status of a lunatic (q.v.), or

II. Judicial proceedings taken before the Judge in Lunacy, that is to say, before "the Lord Chancellor for the time being intrusted by the sign manual of His Majesty with the care and commitment of the custody of the persons and estate of lunatics, acting alone or jointly with any one or more of such judges of the Supreme Court as may for the time being be intrusted as aforesaid, or by any one or more of such judges as aforesaid" (Lunacy Act, 1890, s. 108 (1)), for the purpose of making inquiry (q.v.) into the state of mind of persons alleged to be lunatics, of taking charge of them and their property if they are found to be lunatics, and of having them treated with a view to restoring them to sanity. The proceedings used formerly to generally consist, and sometimes still consist, of a petition presented to the Lord Chancellor alleging the insanity, and supported by affidavits of two medical men and a relative of the alleged lunatic, and praying for an inquiry; an order by the Lord Chancellor directing the inquiry to be taken; and the inquiry before the Master in Lunacy (q.v.) with or without a jury, at which witnesses are examined and the alleged lunatic is inspected. The "finding" or result of the inquiry is stated in a document called the inquisition (q.v.), which consists of the verdict of the jury or (if there was no jury) of the Master's certificate. If the person has thus been found a lunatic, the party having the conduct of the proceedings must forthwith take out a summons, returnable before the Master, to inquire as to (1) The lunatic's age, position in life and residence; (2) The nature of his lunacy; (3) Who are his next-of-kin and heir-at-law; (4) Who ought to be appointed committee of his person and of his estate; (5) His property and the particulars thereof; (6) His income; (7) His past and future maintenance (Rules in Lunacy, 1892, r. 31). As to these matters the Master makes such order as he deems expedient (*ib.*, r. 32). If the lunatic recovers his sound mind, he may obtain his release from restraint by presenting a petition for a *supersedeas*, and, on an order being made, a writ of *supersedeas* issues, by which the inquisition and other proceedings are superseded, determined, annulled and discharged; or the inquisition may be suspended for a time to test the effect of the removal of restraint; or (Lunacy Act, 1890, s. 106), the inquisition may be superseded so far as it finds the lunatic incapable of managing himself, but may be left in force so far as it finds him incapable of managing his affairs.

If the lunatic, or anyone representing him, desires to set aside the inquisition on the ground that he was of sound mind when it was returned, he proceeds by traverse (q.v.).

Procedure by way of petition is costly and lengthy, and has been to a large extent superseded by proceedings under the Lunacy Act, 1890, ss. 116-130 and the Lunacy Act, 1908, s. 1, and such of the Lunacy Rules of 1892 as are applicable. Ss. 117-130 of the Act of

1890 and s. 1 of the Act of 1908 empower a receiver or *quasi*-committee of the estate of a lunatic to do everything which might be done by a committee of his estate; and, unless it be necessary to control the person of the lunatic, the ordinary course is now to move under s. 116 of the Act of 1890 for the appointment of a person to exercise the powers of a *quasi*-committee of the estate of the alleged lunatic, if he be (1) a person lawfully detained as a lunatic though not so found; (2) a person whose whole property does not exceed £2,000, or whose whole income does not exceed £100, or (3) a person who through mental infirmity, arising from disease or age, is incapable of managing his affairs, but who has neither been detained nor found as a lunatic. In applications and orders under the Acts of 1890 and 1908 the use of the words "lunatic" and "lunacy" is avoided.

The High Court also has jurisdiction to authorise the income of the property of a person of unsound mind to be applied for his maintenance; this is done in an action for the administration of the property, instituted in the Chancery Division. See MAINTENANCE.

As to lunatic trustees, see TRUSTEE ACTS.

Where a reception order (q.v.) has been made in the case of a lunatic, the value of whose whole property is under £200, the County Court judge of the place from which the lunatic was sent may, on the application of an officer of the board of guardians, if no relative or friend of the lunatic is willing to act, appoint a person to manage the property of the Lunatic (Lunacy Act, 1890, s. 132; and see County Court Rules, Ord. 50, r. 17). See TRUSTEE ACTS.

Lunatic. A lunatic is defined by the Lunacy Act, 1890, s. 341, as "an idiot or person of unsound mind." The word "lunatic" is also used in law in three senses: to denote (1) a person who has attacks of intermittent insanity separated by lucid intervals, or suffers from delusions (q.v.); (2) a person who from unsoundness of mind is incapable of managing himself or his affairs, and has been found or adjudged to be so by inquisition; and (3) a person detained in an asylum on account of unsoundness of mind.

The word is used in the first sense when it is a question whether a person was insane or not when he entered into a contract, made his will, or did some other civil act; the general rule being that a contract or conveyance, etc., by a lunatic is voidable unless it was entered into by the other party without notice of his state of mind, *bonâ fide*, and for valuable consideration, and has been executed so that there cannot be a *restitutio in integrum*; but the principle is not satisfactorily settled. (See DELUSION.) A petition for divorce may be presented by the committee of a lunatic. The term "lunacy" is not now often used with reference to criminal responsibility, having been superseded by the term "insanity" (q.v.).

In its second sense "lunatic" includes not only insane persons and idiots, but also persons imbecile from age or infirmity, so that they are incapable of managing themselves or their affairs, or are capable of managing their affairs but incapable of managing themselves, or *vice versa*. See INQUISITION; LUNACY; MENTAL DEFICIENCY.

In its third sense the word means a proper person to be taken charge of and detained under care and treatment. Such lunatics are divided into (i) pauper lunatics and criminal lunatics (q.v.), who are confined and maintained at the public expense; and (ii) other lunatics, who are maintained either in private houses or in charitable institutions. As to the supervision of such persons see VISITOR.

As to lunatics generally, see the Lunacy Act, 1890, the Lunacy Act, 1891, and the Lunacy Act, 1908.

See MENTAL DEFICIENCY; URGENCY ORDER.

Lundress. An ancient popular designation of the sterling silver penny (see SILVER COINS), which was coined at the Mint in *Londres* (corrupted into Lundress), or London.

Lupinum. See CAPUT.

Lupulicetum. A hop garden (*Inst.* 4).

Lushburgs or **Luxemburgs.** Base coin made abroad and passed off in this country as English money in the reign of Edward III. The statute 25 Edw. 3, st. 5, c. 2, made it treason to bring into the realm "*la mony appelle Lusburgh*," just as it made it treason to levy war against the king.

Lying-by. A person who is guilty of laches and acquiescence (q.v.) is said to lie by.

Lying-in Hospitals. The statute 13 Geo. 3, c. 82, provides that no lying-in hospital can be established or carried on without a licence, costing 45s. (ss. 1 & 2), from the local quarter sessions, and unless there be over the door in large letters: "*Licensed for the publick reception of pregnant women pursuant to an Act of Parliament passed in the thirteenth year of the reign of King George the Third*," s. 4).

Lyndhurst's (Lord) Act. The popular title of the Marriage Act, 1835. See Campbell's *Lives of the Lord Chancellors*, Vol. VIII., p. 100, as to its origin. It provided that no

marriage between persons within the prohibited degrees (q.v.) of affinity which had been celebrated before 31st August, 1835, should be annulled except in a suit pending on that date, but that any such marriage celebrated after that date should be absolutely null and void. Up to then, such marriages were not void, but were voidable by sentence of the ecclesiastical Court; and unless such sentence was pronounced during the lifetime of both parties to the marriage the children were legitimate.

See DECEASED WIFE'S SISTER.

The same popular title was also applied to the Nonconformist Chapels Act, 1844, and to the Execution Act, 1844.

Lyon's Inn. See INNS OF CHANCERY.

Lytton's (Lord) Act. A popular title of the Dramatic Copyright Act, 1833, now repealed.

M

"M." See BENEFIT OF CLERGY.

M.B.E. See BRITISH EMPIRE, ETC.

M.V.O. See ROYAL VICTORIAN, ETC.

Mace. An ornamental staff, generally made of some precious metal, borne as a symbol of authority, upon occasions of State, before certain persons, such as the Lord Chancellor, the Speaker of the House of Commons, the Lord Mayor, the Chancellors of Universities, etc. The Speaker's mace is on the table of the House while the Speaker is in the Chair; when his place is occupied by the Chairman of Committees while the House is in committee, the mace lies under the table.

In the City of London the Serjeant-at-Mace is not concerned with the mace. He is an officer of the Mayor's Court (q.v.), the process of which is executed by him.

Mace-greff. Used by Britton (q.v.) to mean a purchaser of stolen goods.

Machecollare; Machoulare. Used in *Co. Litt.* 5*a* as meaning to machicolate [a castle], that is to say, to provide it with apertures through which molten lead, stones, etc., could be dropped on assailants.

"Made in Germany." See MERCHANDISE MARKS.

Maegth. In Anglo-Saxon times a man's kindred were known as the *maegth*. See MAG-BOTE.

Mag-bot; Maeg-bote. Used in the *Leg. Canuti*, c. 2, to mean compensation for homicide paid to the kindred of the deceased.

Magister rerum usus (*Co. Litt.* 229). (Use is the master of things.) Compare MINIME MUTANDA, ETC.

Magistrate. The term "magistrate" is sometimes used in a wide sense to denote a person charged with duties of government, and being either supreme, namely, the Sovereign, or subordinate, namely, one of the officers who are appointed by or are subject to the Sovereign. In practice, however, "magistrate" means a judicial officer having a summary jurisdiction in matters of a criminal or *quasi*-criminal nature.

In this sense of the word magistrates are of two kinds, honorary and stipendiary. The former class consists of justices of the peace (q.v.), the latter class includes the magistrates appointed to act in certain populous places (such as the metropolis) in lieu of the ordinary justices. These stipendiary magistrates have wider powers than ordinary justices. To the stipendiary class also belong the recorders in boroughs, and the Recorder and Common Serjeant in the City of London. (See those titles.) See METROPOLITAN POLICE MAGISTRATE; STIPENDIARY MAGISTRATE.

As to the jurisdiction of magistrates generally, see JUSTICE OF THE PEACE. As to their liability for acts committed by them, see CORAM NON JUDICE; JUDGE.

Magna assisa eligenda, De. As to this writ see ASSISE, GRAND.

Magna Carta is the name usually given to the charter originally granted by King John, and afterwards re-enacted and confirmed by Parliament (more than thirty times, according to Coke) in the reigns of Henry III. and Edward I. The charter now in force is the statute 9 Hen. 3, with which our statute book commences. In addition to provisions respecting the feudal tenures, now of no practical importance, the charter contained provisions to protect the subject from abuse of the royal prerogative in the matter of arbitrary arrest and imprisonment, and from amercements, purveyance and other extortions. It also provided for the proper administration of justice, for the uniformity of weights and measures, and the protection of foreign merchants. Coke says that the charter was merely declaratory of the common law; but Coke wrote on the assumption—which is not well founded—that somehow or other there had previously been in existence an amorphous body of law, embodying everything that was excellent, which merely required to be put into shape and solemnly enunciated.

Magna precaria. A great or general reap day, or day of harvesting, on which the Lord of the Manor of Harrow-on-the-Hill was anciently entitled to require his tenants to do a

certain number of days' harvesting for him.

Magnum centum. The great hundred, a measure of number containing one hundred and twenty, which was formerly in use.

Magnum concilium. See GREAT COUNCIL.

Magnus Portus. In the Middle Ages this meant the town and harbour of Portsmouth.

Maiden Assize, Circuit, Sessions. Formerly one at which no prisoner was sentenced to death, but now one at which there is no prisoner for trial. See GLOVES; ASSIZES.

Maiden Rent. A fine of a noble (q.v.), anciently paid on marriage by every tenant of the Manor of Builth in Radnorshire: formerly erroneously supposed to have been in commutation of the mythical *jus primæ noctis* (q.v.).

Maihem. See MAYHEM.

Maiming. See MAYHEM; MALICIOUS DAMAGE.

Mainour. Cowell, writing in 1607, said "*Mainour* alias *Manour* alias *Meinoure* signifieth in our common lawe the thing that a theefe taketh away or stealeth." The phrase "found (or taken) with the mainour" meant to be caught in possession of stolen goods.

Compare INFANGTHEF; HANDHABEND.

Later the phrase to be taken "with (or in) the mainour (or manner)" meant to be found in the commission of any unlawful act, and meant the same as to be taken *in flagrante delicto*.

Mainpernor; Mainprise. Mainprise literally means a taking into the hand, and is used in the old books to signify the process of delivering a person to sureties or pledges (mainpernors) who undertook to produce him again at a future time. Bail applied only to cases where a man was arrested or imprisoned, while a man could be mainperned not only in such cases but also where he had not been arrested or imprisoned, *e.g.*, in an appeal of felony and other obsolete proceedings. Mainpernors were not bound by recognizances to the Crown, as bailsmen were and are, and they could not, like bailsmen, relieve themselves of responsibility by seizing and remitting to custody the man for whom they had gone security. Mainprise has quite fallen into disuse. So also has the writ of mainprise, which lay for a man in custody and entitled to be mainperned if the sheriff refused to mainpern him. See now BAIL.

See MANUCAPTIO.

Mainport. A small payment in kind—generally loaves of bread—which in some places was made by the parishioners to the rector in lieu of tithes.

Maintainor. One guilty of maintenance (q.v.).

Maintenance.—I. In the civil law, maintenance is the supply of necessaries, such as food, lodging, clothing, etc.

Where property is being administered in an action or other proceeding in the Chancery Division, and the persons absolutely or presumptively entitled to it are incompetent to support themselves (as where they are infants or lunatics), the Court will direct a proper portion of the income to be expended for their maintenance. Such an order may also be obtained, in the case of infants, on a summons without the institution of an action.

A maintenance clause in a marriage settlement or will, by which property is given to infants on their attaining majority, or the like, is one which authorises the trustees to expend part or the whole of the income of the property in maintaining and educating the infants during their minority. By the Conveyancing and Law of Property Act, 1860, s. 26, this power was given to the trustees of all settled property. That enactment was repealed by s. 71 of the Conveyancing Act, 1881, and is replaced by s. 43 of the latter Act. The maintenance clause is, therefore, now unnecessary, and is generally omitted. The settlement may, however, provide that s. 43 of the Act of 1881 shall not operate either as regards maintenance or accumulation. See ACCUMULATION; LUNACY.

II. In the criminal law, maintenance, says Coke, "signifieth in law a taking in hand, bearing up or upholding of quarrels and sides, to the disturbance or hindrance of common right . . . and it is twofold, one in the countrey and another in the court." An instance of maintenance in the country occurs where one person assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty. This kind of maintenance is said by Coke to be punishable only at the suit of the King. Maintenance in the Courts includes champerty and embracery (q.v.), and is also used generally to denote the offence committed by a person who, having no interest in a suit, maintains or assists either party, with money or otherwise, to prosecute or defend it. The punishment at common law is fine and imprisonment; it is also prohibited by several statutes. See, for instance, the statutes 1 Rich. 2, c. 4, and 32 Hen. 8, c. 9; but prosecutions for the offence are obsolete. See

BARRATRY; MANUTENTIA, DE.

Majesty. See HIGHNESS.

Major hæreditas venit unicuique nostrum à

jure et legibus quam à parentibus (2 *Inst.* 56.) (A greater inheritance comes to every one of us from legal right and the laws than from our parents.) "The law," Coke goes on, "is the best birth right the subject hath."

Majority. See FULL AGE.

Majus continet minus (*Jenk. Cent.* 208). (The greater contains the less.) Compare IN TOTO, ETC.; OMNE MAJUS, ETC.

Majus dignum trahit ad se minus dignum (*Co. Litt.* 355). (The more worthy draws with it the less worthy.) Merger is an obvious illustration of this maxim. See also OMNE MAJUS, ETC.; CUI LICET, ETC.

Majus est delictum seipsum occidere quam alium (3 *Inst.* 54). (It is a greater crime to kill one's self than to kill another.) This was the view prevailing anciently.

Majus jus. In the reign of Edward III. this was a proceeding in some customary manor courts for the trial of a right to land.

Mala fides ("bad faith") is the opposite of "*bona fides*" (q.v.).

Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est (6 *Rep.* 39). (Bad grammar does not vitiate a deed. But in the interpretation of instruments, bad grammar is to be avoided so far as may be.) That is to say, an interpretation is not necessarily erroneous because it involves an ungrammatical use of words; but such a construction is not to be adopted without actual necessity. Compare MENS TESTATORIS, ETC.

Mala in se; Mala prohibita. *Mala in se* are acts which are wrong in themselves, such as murder, as opposed to *mala prohibita* (*mala quia prohibita*), that is to say, those acts (such as smuggling) which are only wrong because they are prohibited by law. The distinction was formerly of importance with reference to the exemption of ambassadors, which, according to the earlier writers, only extended to *mala prohibita*; but this is no longer the case. See AMBASSADOR.

Mala praxis is where a medical practitioner injures his patient by neglect, want of skill, or for experiment. Ordinary cases of *mala praxis* give rise to a right of action for damages. (See TORT.) In cases of gross misconduct resulting in death the party may be indicted for manslaughter.

Maledicta expositio quæ corrumpit textum (4 *Rep.* 35). (It is a bad exposition which corrupts the text—that is to say, which substitutes other words for those actually used in the statute.)

"Nothing," says Lord Denman, C.J., at 5 Q. B. 184, "is more unfortunate than a disturbance of the plain language of the Legislature by attempt to use equivalent terms."

Maleficia non debent remanere impunita; et impunitas continuum affectum tribuit delinquendi (4 *Rep.* 45). (Evil deeds ought not to remain unpunished; and impunity is a continual inducement to the commission of crime.) See INTEREST REIPUBLICÆ, ETC.

Maleficia propositis distinguuntur (*Jenk. Cent.* 290.) (Evil deeds are distinguished from evil purposes.) Compare IN CRIMINALIBUS NON, ETC.; but see IN CRIMINALIBUS VOLUNTAS, ETC.

Male Servants. An excise licence, expiring on 31st December, must be taken out each year for every male servant who during the year, or any part of it, is employed as *maître d'hôtel*, house steward, master of the horse, groom of the chambers, *valet de chambre*, butler, under-butler, clerk of the kitchen, confectioner, cook, house porter, footman, page, waiter, coachman, groom, motor-car driver, postilion, stable-boy, gardener, under-gardener, park-keeper, gamekeeper, under-gamekeeper, huntsman, or whipper-in (Revenue Act, 1869, ss. 18, 19 (3); Motor Car Act, 1903, s. 13) whether he is employed for the purpose of a trade or business or not: but no licence is required for soldiers or sailors employed as servants by officers pursuant to the King's Regulations, or for a servant, other than one driving a carriage let for more than twenty-eight days, employed at a livery stable of which entry has been made, or for a driver employed to drive a public stage or hackney carriage for the licensee thereof (Revenue Act, 1869, s. 19 (5)), or for servants employed at any house of public entertainment or at a boarding-house (Customs and Inland Revenue Act, 1873, s. 4 (4)), or where a male servant who does not live in his employer's house is employed in one of the taxable capacities for only an inconsiderable part of each day, or where a male servant living with his employer in a non-taxable employment is employed only occasionally in a taxable capacity (Customs and Inland Revenue Act, 1876, s. 5); but, except in cases coming within the above exemptions, the licence is required in respect of every servant employed in a taxable capacity for any time, however short. The duty on the licence is 15s. per annum.

The licences for male servants (as well as those for armorial bearings and for carriages) are known as establishment licences, and are also included in the larger category of local taxation licences (q.v.).

Maletent. There never was such a word outside the law dictionaries. The statute 25 Edw. 1, c. 7, in the original law-French, prohibited the *male toute* (the low Latin *mala tolta*, or bad tax), which was a toll on every sack of wool: and this was mis-read as *maletent*.

Malfeasance is the doing of an unlawful act, *e.g.* a trespass. See MISFEASANCE; NONFEASANCE; TORT.

Malice; Malicious. "Malice," said Lord Campbell, "in the legal acceptation of the word, is not confined to personal spite against individuals, but consists in a conscious violation of the law to the prejudice of another" (3 *Cl. & F.* 321). "Malice," said Mr. Justice Bayley, "in common acceptation, means ill-wind against a person; but in it's legal sense, it means a wrongful act done intentionally without just cause or excuse. If I give a perfect stranger a blow likely to produce death, I do it of *malice*, because I do it *intentionally*, and without just cause or excuse. . . . If I am arraigned of felony, and wilfully stand mute, I am said to do it of *malice*, because it is intentional, and without just cause or excuse." (4 *B. & C.* 255) Personal spite or ill-will is sometimes called actual malice, express malice, or malice in fact, to distinguish it from malice in law. As to the effect of actual malice in questions of libel and slander, see PRIVILEGE.

In the definition of murder, malice aforethought exists where the person doing the act which causes death has an intention to cause death or grievous bodily harm to any person (whether the person is actually killed or not), or to commit any felony whatever, or has the knowledge that the act will probably cause the death of or grievous bodily harm to some person, although he does not desire it, or even (as in the case of an abortionist) wishes to avoid it. See HOMICIDE; MANSLAUGHTER; MURDER.

Malicious Arrest is where a person maliciously and without reasonable cause procures another to be arrested. He thereby makes himself liable to an action for damages. The term is practically confined to cases of arrest in civil cases (*i.e.*, for debt, etc.) which have now become rare. See ARREST; DEBTORS ACT; MALICE; TORT; FALSE IMPRISONMENT.

Malicious Injuries to the Person. Everyone who unlawfully and maliciously wounds or causes any grievous bodily harm to any person, or shoots or attempts to shoot him with the intent in any such case to maim, disfigure, disable or do some grievous bodily harm to him, is guilty of felony, and liable to penal servitude for life (Offences against the Person Act, 1861, s. 18).

Malicious Injuries to Property—by which is meant those injuries to property which proceed rather from malicious or wanton motives than from any proposed gain to the offender—are in many cases criminal acts. They include arson (q.v.), causing injuries to buildings, etc., by gunpowder, destroying trees, cattle, etc., exhibiting false signals, removing buoys, etc., causing injuries to machinery, goods in process of manufacture, canals, telegraphs, ships, etc. Actual malice against the owner of the property is not essential (see the Malicious Damage Act, 1861). Cases of malicious damage to an extent not exceeding £20 can now be dealt with summarily under s. 14 of the Criminal Justice Administration Act, 1914. See ANCIENT MONUMENTS.

Malicious Prosecution is where a person maliciously institutes criminal proceedings against another without reasonable or probable cause, that is, believing that he is innocent or not having good reason to believe that he was guilty. For the damage thereby caused to the accused he can sustain an action against the wrongdoer, but only when and if the charge is dismissed or results in a verdict of not guilty. The question of reasonable and probable cause is for the judge and not for the jury.

Malin's Act. The popular title of the Infant Settlements Act, 1855, and of the Married Women's Reversionary Interests Act, 1857.

Malitia supplet ætatem (*Dyer*, 104*b*). (Malice makes up for the want of years: but not always.) See AGE.

Malus usus est abolendus, quia in consuetudinibus non diuturnitas temporis, sed soliditas rationis est consideranda (*Co. Litt.* 141). (A usage which is bad in law ought to be abolished, because, in dealing with customs, it is not the length of time for which they have prevailed but the validity of the argument which can be advanced that has to be considered.) The maxim is cited in part at 4 *Inst.* 274.

Malveis Procurors. Jury-packers: those who procured the appointment of jurors who were not impartial. See *Articuli super Chartam*, c. 10.

Manager. In Chancery practice, when a receiver (q.v.) is required for the purpose not only of receiving rents and profits, or of getting in outstanding property, but of carrying on or superintending a trade or

business, he is usually denominated a "manager," or a "receiver and manager." The most usual cases in which managers are appointed are those which relate to partnerships or to mines or collieries. In a case where the trade or property is abroad, or in one of the colonies, and the manager must necessarily be resident there, it is usual to add to the order directing the appointment of a manager an order for the appointment of one or more consignee or consignees resident in this country, to whom the produce of the property in question may be remitted, and by whom it may be disposed of.

As to the appointment of a manager by way of execution of a judgment against a railway company, see EXECUTION.

In bankruptcy, a special manager of the business of the debtor until a trustee is appointed may be appointed, on the application of any creditor, by the official receiver under the Bankruptcy Act, 1914, s. 10; and the official receiver, when acting as interim receiver under s. 8 of the Act, can, of his own motion, appoint a special manager.

Under the Companies (Consolidation) Act, 1908, s. 161, the official receiver, when he becomes the liquidator of a company, may, if satisfied that a special manager is required, apply to the Court that a special manager be appointed, and the Court may thereupon appoint a special manager.

In parliamentary practice, where the two Houses of Parliament have a conference (*e.g.*, to settle amendments to a bill as to which there is a difference between the two Houses), each House appoints managers to represent it, and the conference is held between the managers. As to managers of an impeachment, see that title.

Managing Owner of Ship. The managing owner of a ship is one of several co-owners, to whom the others, or those of them who join in the adventure, have delegated the management of the ship. He has authority to do all things usual and necessary in the management of the ship and the delivery of the cargo, to enable her to prosecute her voyage and earn freight, with the right to appoint an agent for the purpose. It seems that it is a question to be decided in each case, whether a managing owner has been appointed by all his co-owners or only by some of them, and consequently whether he has power to bind all of them or only some of them: "he binds those whose agent he is; he binds nobody besides" (*per* Bowen, J., 6 *Q. B. D.* 93).

Under the Merchant Shipping Act, 1894, s. 59, the name and address of the managing owner for the time being of every registered British ship must be registered, or, if there is no managing owner, the ship's husband (q.v.) or other person to whom the management of the ship is entrusted, must be registered.

Manbote. Before, and for some time after, the Conquest, this was the fine paid by a homicide, more especially to the overlord when the deceased was unfree. The manbote in that case was, however, less than that payable to the relations of a freeman.

Manca; Mancus. This is stated to have been a square gold coin, current about the time of the Conquest and value for thirty silver pennies. But it must have been a continental coin, there being no English gold coinage before the reign of Henry III. See GOLD COINS.

Manche-present. A bribe.

Manchester Registry. See TRADE MARKS.

Mandamus is a writ issued in certain cases to compel the performance of a duty. It is directed to the person who is subject to the duty, and not to a sheriff or similar officer.

The prerogative writ of mandamus issues in the King's name from the High Court of Justice on application to the King's Bench Division in some cases where the injured party [the prosecutor] has also another less speedy method of redress, as in the case of admission or restitution to an office; but it issues in all cases where the party has a right to have anything done, and has no other specific means of compelling its performance, especially where the obligation arises out of the official status of the respondent and is hence of a public or *quasi*-public character. Thus the writ is used to compel the election of corporate officers, to compel public officers to perform duties imposed upon them by common law or by statute (*e g.*, to make a rate), to compel inferior Courts to proceed in matters within their jurisdiction (cf. PROCEDENDO; PROHIBITION), to compel the lord of a manor to admit a person as tenant of copyholds (see ADMITTANCE); it is also applicable in certain cases where a duty is imposed by Act of Parliament for the benefit of an individual: thus it lies to compel a railway company to comply with the provisions of its Act for the benefit of private persons (*e.g.*, to build a bridge, open a road, etc.), but in many such cases it has been superseded by the Order under R. S. C. Ord. 53 (*infra*). The writ recites the facts giving rise to the obligation, and commands

the defendant to do the act or show cause why he should not; he may excuse himself by showing that the prosecutor, on his own showing, is not entitled to the writ, or by traversing some material fact alleged in the writ, or by alleging fresh matter as an answer to the prosecutor's case; if the return is insufficient or false the prosecutor may move to quash it, or may traverse or plead to it, or may bring an action to recover damages for a false return (see RETURN). In any case in which the right to the writ is established, the Court awards a peremptory mandamus, to which no excuse or other return except performance of the act required is allowed.

When witnesses whose evidence is required in a cause pending in the High Court in this country are resident in India or other parts of the King's dominions abroad, a writ in the nature of a mandamus may be issued requiring the judges of the principal Court in the colony to examine the witnesses and send over the depositions to be used at the trial (East India Company Act, 1772, ss. 40, 44; Evidence on Commission Act, 1831, s. 1). This writ is now, however, never issued: the present practice is to issue letters of request (q.v.) to Indian and colonial Courts as well as to those countries which act on such letters, and to issue a commission (q.v.) or appoint an examiner (q.v.) for those countries which do not.

Under Ord. 53, r. 1, the plaintiff in any action in the High Court may claim a mandamus, commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested. The construction put upon this rule limits it to cases where the duty is of a public or *quasi*-public nature (*e g.*, to compel a railway company to carry out a compulsory purchase), and not merely personal, such as that arising out of a contract. If judgment be for the plaintiff an order may be made commanding the defendant to perform the duty in question (*ib.* r. 3) and such order has the same effect as a writ of mandamus, which can no longer be issued in an action (*ib.* r. 4). This procedure is in lieu of that under the Common Law Procedure Act, 1854, ss. 68-74, which created the action of mandamus and provided for the issue of a peremptory writ of mandamus if the plaintiff succeeded.

By the Judicature Act, 1873, s. 25 (8), an interlocutory mandamus may be granted in any case in which it shall appear to the Court to be just or convenient. See INJUNCTION.

The writ of mandamus is so called from the words *vobis mandamus*, "we command you," with which, when the writ was in Latin, the mandatory part commenced. Originally "*mandamus*" was the generic name for a class of writs varying in their form and object, but totally different from the modern prerogative writ, which, for the sake of distinction, was called a special mandamus. In the fourteenth and the beginning of the fifteenth century the writ was in form a mere letter-missive from the Sovereign; during the latter half of the fifteenth century the writ was directed to issue on a petition to Parliament for redress; it thus became in form a parliamentary writ, and, being then chiefly used to enforce restitution to public offices, was commonly known as the "writ of restitution"; finally it became an original writ, issuable by the Court of King's Bench in all cases where there was a legal right, but no other specific remedy.

Anciently there was a writ of mandamus ordering the sheriffs to take into the hands of the king the lands of a king's widow (q.v.) who had married without the royal licence; and there was another writ of mandamus which in certain cases (F. N. B. 253) was used instead of a *diem clausit extremum* (q.v.)

Mandata licita strictam recipiunt interpretationem, sed illicita latam et extensam (*Bac. Max. Reg.* 16). (Lawful orders receive a strict interpretation, unlawful orders a wide and extended one.) Thus if A gives a lawful authority to B, then only such acts as are clearly within that authority are held to be the acts of A: but if C employs D to poison E, and D, contrary to the letter of his instructions, but within the spirit of them, takes it upon himself to strangle E, then C will still be an accessory before the fact to the murder of E.

Mandatarius terminos sibi positos transgredi non potest (*Jenk. Cent.* 53). (A mandatary cannot exceed the limits imposed upon him.) Compare MANDATA LICITA, ETC.

Mandatary. A bailee in a case where the bailment is a *Mandatum* (q.v.).

Mandate is a direction or request. Thus a cheque is a mandate by the drawer to his banker to pay the amount to the transferee or holder of the cheque. The word mandate is also used as an equivalent for *mandatum* (q.v.). In early times, before the independence of the superior Courts had been established, the Crown controlled their actions by mandates or orders to pursue such and such a course.

Mandati dies. Maundy Thursday (q.v.).

Mandatory. See INJUNCTION. The mandatory part of a writ is that part by which the person to whom it is directed is commanded to do the act required of him.

Mandatum. See BAILMENT.

Mandavi ballivo. (I have commanded the sheriff.) Where a sheriff receives a writ which has to be executed within a place which is a liberty he commands the bailiff of the liberty to execute the writ and afterwards makes the return *mandavi ballivo*, setting out also what return, or that no return, has been made by the bailiff.

Manentes. Those who had to stay on the land, that is to say, villeins.

Manifest. In the case of a merchant vessel this is a list of the goods making up her cargo, with the names of the shippers. See the Revenue Act, 1884, s. 3.

Manifesto. In international law this is a declaration by which a State gives notice of the existence of a state of war between it and another State.

Man, Isle of. Since 1290, this island has been under the protection of the English Crown, which for long delegated its rights to a succession of nobles. They, from 1406 to 1649, were known as Kings of Man: in 1649 the title was changed to Lord of Man; the last Lord of Man was the Duke of Athol, whose rights were acquired by the Crown in pursuance of the Isle of Man Purchase Act, 1765 (5 Geo. 3, c. 26). But the island was never incorporated with Great Britain. It remains a "dominion," though not a foreign dominion, of the Crown. The bishop—known as the Bishop of Sodor and Man—has a seat, although not a vote, in the House of Lords: but otherwise the island is entirely without any parliamentary representative. Parliament, however, can and occasionally does legislate for it: but in the absence of express provision it is not affected by any statute, and it makes its own laws subject to its own constitution.

It is included in the expression British Islands unless the contrary intention appears (Interpretation Act, 1889, s. 18 (1)).

See KEYS.

Manner; Manour See MAINOUR.

Manning. A man's work for one day: used in old leases reserving to the lessor so many *mannings* in each year from the lessee.

Mannire. To summon before a Court, where the summons was by the opposite party. Compare BANNIRE.

Manor. Properly speaking, a manor is a district of land of which the freehold is vested in a person called the lord of the manor, of whom two or more persons, called freeholders of the manor, hold other land in respect of which they owe him certain free services, rents or other duties. Hence every manor must be at least as old as the Statute of Quia Emptores (q.v.); indeed, immemorial existence is essential to a manor. The land which is vested in the lord is called the demesnes (q.v.), and comprises (1) the land of which the lord is seised, and which may be wholly in his own occupation or in that of his lessees for years, but in most manors is to a great extent in the occupation of the copyhold and customary tenants of the manor (though copyholders are not essential to a manor), and (2) the waste lands of the manor, usually subject to the tenants' customary rights of common. (See COMMON.) A Court Baron for the freeholders, and a Customary Court for the copyholders (if any), are necessary incidents to every manor, and the principal manor in a parish usually has an advowson appendant to the demesnes. There are also in general either annexed or appurtenant to the manor a variety of franchises (q.v.) exercisable by the lord, such as the right to have a Court Leet, the right to waifs and strays, treasure trove, wreck, the liberties of holding fairs and markets, of taking tolls and the like. Accordingly, a manor proper is shortly defined as consisting of demesne lands, jurisdiction in a Court Baron, and services of free tenants in fee, who are liable to escheat (q.v.) and owe attendance at the Court; or, more shortly still, as consisting of demesnes and services. See DEMESNE; SERVICE.

If the number of free tenants is reduced below two, the Court Baron cannot be held, and the manor ceases to exist, but may survive as a manor by reputation for the purpose of making a title to franchises or for holding copyholders' Courts. If all the demesnes are alienated, the manor is extinguished, and becomes merely a "lordship in gross"; while a temporary severance of all the demesnes, as by a lease for years, causes a suspension of the manor.

If a copyhold tenement has by immemorial custom been treated by the tenant as if it were itself a manor, *e.g.*, by holding Courts, granting part of it to be held of himself as copyhold, etc., this forms a customary or copyhold manor, and the tenant is called a customary lord, although, as far as regards the principal manor, he is himself merely a copyholder of that manor, and pays fines, etc., like the other tenants.

"Manor" may mean the district actually or formerly comprised in a manor in the strict sense, although the land may have been separated from it by enfranchisement.

"Manor" is derived from the Norman-French *manoir, maners* (Latin, *manerium*, from *manere*, to remain or dwell), a dwelling or habitation, originally applied to the mansion of the lord. It is now generally supposed that manors were not a creation of the Norman Conquest, but an adaptation to the Norman rules of tenure of the institutions known as vilage communities which existed among the Saxons.

Mansion. "'Mansion' is in our law most commonly taken for the chief messuage or habitation of the Lord of a Mannor—the Mannor House where he doth most remain or continue, his Capitall Messuage as it is called," says the *Termes de la Ley* (1641); and in this sense the word was of identical meaning with the *capitale mansum* of earlier times. Alongside this meaning of the word there had grown up the meaning of any dwelling-house: thus the statute 11 Hen. 7, c. 9, s. 2, speaks of "every . . . mancion or dwelling place." But this "mansion" included all buildings within the curtilage of a dwelling-house, and the whole "mansion" in this sense was the subject of burglary (q.v.) until the statute 7 & 8 Geo. 4, c. 29, s. 13, excluded from the definition of the "dwelling-house" which can be the subject of burglary any structure between which and the inhabited house there is no covered communication, and thereby made a clear distinction between a dwelling-house and a mansion.

See PRINCIPAL MANSION HOUSE; MESSUAGE.

Manslaughter is the crime of unlawful homicide, without malice (q.v.) aforethought, either express or implied. The most frequent instances occur (a) where death is caused accidentally by an unlawful act, as where A strikes at B with a small stick, not intending either to kill him or to do him grievous bodily harm, and the blow kills him; (b) where death is caused by culpable negligence, as where A, whose duty it is to put a stage at the mouth of a colliery shaft, omits to do so from mere negligence, in consequence of which B is killed; (c) where death is caused by an act done in the heat of passion, caused by provocation (q.v.).

Manslaughter is felony, punishable by penal servitude for life, or a fine (Offences against the Person Act, 1861, s. 5).

Upon an indictment for murder, the jury, if they find that malice aforethought has not been proved, can bring in a verdict of manslaughter.

Mansum Capitale. See MANSION.

Man-trap. Setting (except in a dwelling-house for the protection thereof between sunset and sunrise) any "spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm is an indictable misdemeanour (Offences against the Person Act, 1861, s. 31).

Manuale obedientia. Sworn submission: See MANUIS.

Manualia beneficia. The subsistence allowance anciently paid to canons and other members of chapters.

Manucaptio; Manucaption; Manucaptor. *Manucaptio* or manucaption was the writ of mainprise, and manucaptors were the mainpernors (q.v.).

Manumission was the act of freeing or enfranchising a villein. (See *Litt.* 204 *et seq.*) The term is taken from the Roman law.

Manu opera. This meant either (1) stolen goods taken from a thief or (2) cattle and farming implements.

Manupastus. Used in the Leg. Hen. 1, c. 66, as meaning a domestic servant.

Manus. Anciently used as meaning an oath. See DEFENDERE UNICA MANU.

Manutentia, De. This was the writ anciently issued against one guilty of maintenance (q.v.) (*Reg. Brev.* 182, 189).

Marcata. A rent of one mark.

Marchers, Lords. From a time soon after the Conquest, the English kings permitted their nobles to conquer and to hold such parts of Wales as they could. Each noble—there were 137 of them in 1536—was given *jura regalia*, or sovereign rights, within the area held by him: and this went on until the conquest of Wales in 1282. Each of such nobles was known as a lord marcher and his territory was called a lordship marcher. The territory held by them included approximately the present Welsh counties of Brecknock, Denbigh, Glamorgan, Montgomery, Pembroke, and Radnor, the English county of Monmouth, and parts of Shropshire, Herefordshire, and Gloucestershire. The statute 28 Edw. 3, c. 11, declared their territories perpetually annexed to the English Crown; and their *quasi*-sovereign position came to an end in 1543. See WALES.

Marches. Anciently this meant the boundary between England and Wales and that between England and Scotland. Powerful nobles were appointed by the Crown to act as

Wardens of the Marches (see DEFENSIVA), that is to say, to prevent invasion.

See MARCHERS, LORDS; COURT OF THE COUNCIL OF THE MARCHES; DIES MARCHIÆ.

Marchet; Marcheta; Merchetum; Merchetæ. This was a fine which some tenants had to pay to their lord for liberty to give away their daughters in marriage. According to the old writers, no free man could be liable to pay such a fine, but only villeins, and therefore it could not be claimed by custom against all the tenants of a manor. But in later times a free man could take lands to hold by the service of marchet, if he liked to do so. The tenure by marchet seems to have been long obsolete. The fine was in respect of any loss of service which the lord might sustain. The idea that it was in any way connected with the mythical *jus primæ noctis* (q.v.)—as that expression is commonly understood—is said to be quite without foundation; but see *Boerii Decisiones Burdigalenses*, Lyons, 1579, fol. 532, cited at p. 423 of C. P. Cooper's *Catalogue of Books on Foreign Law*, 1849, from which it appears that in old France some seigneurs had this right which was there termed *Markette, Marketa, Marquette, Merchet or Mercheta.*

Marchioness. See MARQUIS.

Mare liberum; Mare clausum. See SELDEN; GROTIUS.

Margarine. "For the purposes of the Sale of Food and Drugs Acts and this Act the expression 'margarine' shall mean any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter" (Butter and Margarine Act, 1907, s. 13 (1*j*). See BUTTER; MILK-BLENDED BUTTER.

Margarine-cheese. "In the Act, unless the context otherwise requires, the expression 'margarine-cheese' means any substance, whether compound or otherwise, which is prepared in imitation of cheese and contains fat not derived from milk" (Sale of Food and Drugs Act, 1899, s. 25). See CHEESE.

Marginal Notes. The notes in the margins of Acts of Parliament which shortly indicate the subject-matter or the substance of each section. They are not considered by Parliament and are not part of any Act, and anyone printing any Act is at liberty to alter them as he may think fit.

Marine Boards. See the Merchant Shipping Act, 1892, ss. 244-245.

Marine Insurance. See INSURANCE.

Marine Society. This society, which now carries on the well-known *Warspite* training establishment, was formed in 1756 for the purpose of training to the sea-service boys who otherwise would have drifted into criminal courses. It was incorporated by the statute 13 Geo. 3, c. 67.

Marine Store Dealer. A "person dealing in, buying or selling any of the articles following, that is to say, anchors, cables, sails, old junk, or old iron, or other marine stores of any kind" (Merchant Shipping Act, 1894, s. 538). He is to be distinguished from "a dealer in old metals" (see OLD METALS), who can come within the definition of that term without being a "marine store dealer"; but one and the same person may deal in such articles that he is both "a dealer in old metals" and a "marine store dealer."

If he is a "marine store dealer" his business is specially regulated by ss. 538-542 of the Merchant Shipping Act, 1894; he, like a dealer in old metals, is liable on summary conviction to a penalty if found in possession of public stores for which he fails to account (Public Stores Act, 1875 (38 & 39 Vict. c. 25), ss. 9, 10), or if he purchases old metal from anyone apparently under sixteen (Children Act, 1908, s. 116); and dealers of both kinds are subject, in places where the Public Health Amendment Act, 1907, is in force, to s. 86 of that Act, which provides for their registration with the local authority and for the keeping by them of books recording the description and price of all articles bought by them and the names and addresses of the vendors.

Marines. See ROYAL MARINES.

Maritagio amisso per defaltum, De. A writ which anciently lay under the Statute of Westminster II. c. 4, for a tenant in frank-marriage who had lost through his default the land so held by him.

Maritagium. The power which the lord had of disposing of his infant ward in marriage. Also land given as a marriage portion; also a dowry of any kind.

See FRANKMARRIAGE.

Marital Rights are, or were, the rights of a husband. The expression was chiefly used to denote the right of a husband to property which his wife was entitled to during the treaty of marriage. If, after the engagement to marry, she made a voluntary conveyance of any part of that property without notice to the intended husband, it was considered a fraud on his marital rights, and therefore liable to be set aside, although he might not have known that she was entitled to the property; but since the Married Women's Property Act, 1882 (q.v.), this doctrine of fraud on

marital rights has become obsolete. (See JUS MARITI.) The expression marital rights is now used as synonymous with conjugal rights (q.v.).

Maritima Angliæ. In ancient patents running from Edward II. to Henry VIII., this is used as meaning the sea coast. The eighteenth-century compilers of law dictionaries state that it meant the profits and emoluments of the sea which were anciently collected by the sheriff but were afterwards granted to the Lord High Admiral: but this statement would appear to be erroneous.

See COSTERA.

Maritima incrementa. Alluvion (q.v.), when caused by the action of the sea.

Maritime Law. See ADMIRAL; ADMIRALTY; AFFREIGHTMENT; BILL OF LADING; CHARTER-PARTY; INSURANCE; LIEN; MERCHANT SHIPPING; UNDERWRITER.

Maritime Laws. See OLERON; WISBY; CONSOLATO DEL MARE; WHITE BOOK OF LONDON; RED BOOK OF BRISTOL; DOMESDAY OF IPSWICH; RHODIAN, ETC.; HANSEATIC, ETC.

Maritime Territory. The same as territorial (q.v.) waters.

Mark. See SILVER COINS.

As a measure of weight the mark was always two-thirds of the pound weight, just as, in the monetary system, it was two-thirds of the pound sterling.

See MARKSMAN; MERCHANDISE MARKS ACT; TRADE-MARK.

Marketable Security. For the purposes of the Stamp Act, 1891, the expression "marketable security" is defined by s. 82 of that Act.

Market Garden. This means "a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening" (Agricultural Holdings Act, 1908, s. 48).

With regard to what were at common law fixtures and the absolute property of the landlord: a market gardener may before the determination of his tenancy remove fruit trees and bushes planted, but not permanently set out; and if he fails to do so, they become the property of the landlord without any compensation being payable (Agricultural Holdings Act, 1908, s. 42 (1) (iii)). Any tenant is entitled to remove and retain any engine, machinery, fencing or other fixture affixed by him to the holding, and any building erected by him thereon for which he is not entitled to compensation, and which he was under no obligation to erect, provided that he has given a month's previous notice in writing to the landlord, and that the landlord has not within such month elected to purchase at the fair value (to be fixed, in default of agreement, by arbitration) to an incoming tenant (s. 21 (1)); but this right of an outgoing tenant, while applying to fixtures or buildings acquired by him since 1st January, 1900, does not apply to any fixture or building affixed or erected before 1st January, 1884 (s. 21 (2)).

Market Overt means "open market." Market overt in ordinary market towns is only held on the special days provided for particular towns, by charter or prescription; but in the City of London every day, except Sunday, is market day. The market place, or spot of ground set apart by custom for the sale of particular goods, is also in ordinary towns the only market overt; but in the City of London every shop in which goods are exposed publicly for sale is market overt, though only for such things as the owner professes to trade in.

The doctrine of market overt is that all sales of goods made therein are not only binding on the parties, but also on all other persons: so that if stolen goods are sold in market overt, the purchaser (unless, possibly, he be a shopkeeper buying in his own shop—see [1892] 1 *Q. B.*, at pp. 29, 31), if acting in good faith, acquires a valid title to them against the true owner (Sale of Goods Act, 1893, s. 22 (1)) unless the latter has prosecuted the thief to conviction, in which case the goods re-vest in the true owner (*ib.*, s. 24 (1)), and the buyer is left to obtain compensation (under the Criminal Law Amendment Act, 1867, s. 9, where the conviction is summary and under the Larceny Act, 1916, s. 45 (3), where the conviction is on indictment) out of any money which may have been taken from the thief on his apprehension.

The doctrine of market overt does not apply to goods belonging to the Crown, and in the case of horses it is subject to statutory restrictions. See HORSES.

Markets and Fairs. At common law either a market or a fair is a franchise (q.v.) (or privilege) to establish meetings of persons to buy and sell. The privilege is in each case derived either from royal grant or from prescription implying such grant. It may be possessed by a lord of a manor or by a municipal corporation or other body corporate. The franchise carries with it the right to restrain—by *scire facias* (q.v.) or by injunction—any other man from setting up another market or fair so near as to interfere with the exercise of the franchise; and it also implied the right to hold a Court of Pie Powder (q.v.); but the right to levy tolls (q.v.) is not implied and exists only where given by the grant.

The difference between a fair and a market is that the fair is the larger gathering, and is held, say, only once or twice a year, while a market is held once or twice a week.

In course of time many fairs had ceased to fulfil any useful purpose, and had become mere gatherings of undesirable persons. The Fairs Act, 1871, empowered the Secretary of State to abolish any fair upon the representation of the justices of the petty sessional district in which it was held, and with the consent of the owner of the franchise. Under the Fairs Act, 1873, the Secretary of State may alter or lessen the days on which a fair is held upon the like representation of the justices, or upon the representation of the franchise owner.

The holding of unlawful fairs within the metropolitan police district can be summarily prevented under the Metropolitan Fairs Act, 1868.

In the great modern centres of population, markets are held either under special local Acts —generally embodying the Markets and Fairs Clauses Act, 1847—or under s. 166 of the Public Health Act, 1875.

The "hiring fairs" or "mops," still occasionally held for the purpose of the making of agreements between employer and domestic servants or farm labourers, are not fairs or markets in the legal sense. See STATUTE FAIR.

See CLERK OF THE MARKETS.

Marksman. Where a person who cannot write is desirous of subscribing his name to a document, another person writes it for him, and he identifies it as his signature by inscribing over it, or near it, a mark, usually a cross. He is hence called a marksman. It seems that if there is any peculiarity about the mark, the evidence of a person who is acquainted with the mark usually made by the alleged maker of the particular mark in question is admissible to prove it as the handwriting of the marksman, but not otherwise. See HANDWRITING.

Marlebridge, Statute of. The statute 52 Hen. 3, whereof cc. 1, 2, 4 and 15 (all dealing with distress) are still in force. When the statute was passed the town of Marlborough was known as Marlebridge.

Marque; Mart. See LETTERS OF MARK; LETTERS OF COUNTER-MARK. "Mart" is the form of the word used in Sch. I. to the Marine Insurance Act, 1906.

Marquis; Marquess. The rank in the peerage next below that of duke. The title dates from 1386. The wife of a marquis is formally styled marchioness, but is informally known as Lady Carabas, or as the case may be; and his sons (other than the eldest son, who takes by courtesy the next lower title—usually an earldom—of the family) are by courtesy entitled to the prefix of "lord," while his daughters are entitled in like manner to the prefix of "lady." During his life the eldest son of his eldest son bears by courtesy the title of the family next in rank after that used by the eldest son. See LORD; LADY.

See PEERAGE.

Marriage.—I. Marriage is the voluntary union for life of one man and one woman to the exclusion of all others, for the purpose of living together and procreating children, entered into in accordance with the rules as to the consanguinity (q.v.) or affinity (q.v.) of the parties, and their capacity to enter into and perform the duties of matrimony, prevailing in the place of domicile of the parties, and in accordance with the rites or formalities required either by the law of England or the place where the marriage takes place, as to which see MARRIAGE ACTS. A marriage must not contravene the fundamental principles of Christianity, and hence a polygamous marriage, although valid according to the *lex loci*, is no marriage according to English law.

As to capacity to marry, see CONSENSUS, ETC.

It is sometimes said that marriage is a contract, but this is incorrect; the agreement of the parties is essential to a valid marriage (see AGREEMENT); but when it has been solemnized marriage is a personal relation of a very special kind, somewhat resembling a natural relationship.

Under the canon law, as it existed before the rupture with Rome in the reign of Henry VIII., a marriage could be validly contracted (1) by a public celebration of the marriage service in a church, known as a celebration *in facie ecclesiæ;* (2) by a clandestine celebration anywhere conducted by one in priest's orders. The common law adopted the canon law as stated above. The Council of Trent, in 1563, modified the canon law in a manner immaterial from the point of view of the English law, which of course took no cognizance of the proceedings of the Council. But after the Reformation the common law put those in priest's or deacon's orders of the Church of England on the same footing as those in priest's orders of the Roman or Eastern Churches. The Convocation of the Province of Canterbury in 1603 passed certain canons, known as the Canons of 1603, which laid it down, among other things, that before the celebration of a marriage there must either be a licence or a

publication of banns. But these canons, although binding to the extent that persons who violated them were liable to ecclesiastical censure, were never part of the law of the land, which therefore down to 1754 remained what it had been before the Reformation. A number of clergymen officiating in churches and chapels which were free from the visitation of the ordinary found it to their profit to celebrate marriages without banns or licence: but after the Commissioners for Ecclesiastical Causes had, about 1684, taken action against such clergymen, marriages of this kind ceased to be celebrated on a large scale by anyone who had anything to lose and the business passed mainly into the hands of the Fleet (q.v.) parsons, the process being accelerated by the statutes 6 & 7 Will. 4, c. 6, 7 & 8 Will. 4, c. 35, and 10 Anne, c. 19, s. 176, which imposed pecuniary penalties for marrying, or getting married, without either licence or banns. The profits, however, were large, and many clandestine marriages continued to take place even outside the Fleet and its purlieus until 1754, when the statute 26 Geo. 2, c. 33 (Lord Hardwicke's Act) made it impossible to contract any valid clandestine marriage. That Act provided that any marriage celebrated after the 25th March, 1754, without publication of banns or licence duly granted should be absolutely null and void; that any marriage celebrated elsewhere than in the parish church or public chapel (in which banns were usually published) should be null and void in the absence of a special licence from the Archbishop of Canterbury for its celebration elsewhere; and that anyone solemnizing a marriage without banns or licence should be guilty of felony, punishable with fourteen years transportation. The Act had, however, unfortunate effects. It made invalid marriages of dissenters and Roman Catholics celebrated according to the rites of their respective communions, which antecedently had been valid. Such marriages had been valid in the case of Roman Catholics, because a Roman Catholic priest was recognised by the common law as being in priest's orders; and they were valid, in the case of dissenters, by force of the statute 1 Will. and Mar. c. 18 (the Toleration Act). But Lord Hardwicke's Act gave the Church of England the sole right of celebrating valid marriages; and this state of things continued until it was terminated by the enactment of the Marriage Act (q.v.) 1837.

Marriage affects the property as well as the person. For many purposes the husband and wife are one person in law, and hence the husband cannot at common law give or grant property to his wife *inter vivos*, though he can under the Statute of Uses (q.v.); and a grant of land to the husband and wife by a third person gives them an estate by entireties (q.v.).

If the husband survives the wife he has an interest in her lands and tenements during his life (see CURTESY), and *vice versâ* (in certain cases) if she survives him (see DOWER); but these interests are not now of frequent occurrence, other provisions being generally made by a settlement executed on the marriage. (See SETTLEMENT.) As to the interests acquired by each of the spouses in the personalty of the other, see JUS MARITI; DISTRIBUTION; NEXT OF KIN.

A husband was formerly liable for all the debts and liabilities of his wife contracted before the marriage, but this rule was broken down by the Married Women's Property Act, 1870, s. 12, which provided that in the case of marriages taking place after 9th August, 1870, a husband should not be liable for his wife's ante-nuptial debts. See MARRIED WOMEN'S PROPERTY ACTS.

A wife is not criminally liable for an offence committed by her under the coercion of her husband, except in the case of treason or murder and other heinous crimes.

II. Marriage formerly signified not only the union of man and wife, but also the right of a guardian by tenure to bestow his ward in marriage, "which," as Coke puts it, "the law gave to the lord, not for his benefit onely, but that he should match him [the ward] vertuously and in a good family without disparagement." If an infant tenant by knight's service refused such a marriage, the lord was entitled to the value of the marriage, that is, to the amount which he would have received for giving his ward in marriage; but a guardian in socage could make no profit by the marriage of his ward.

See BIGAMY; BREACH; DISPARAGEMENT; DIVORCE; FORFEITURE OF MARRIAGE; HUSBAND AND WIFE; MARITAL RIGHTS; MARRIED WOMEN'S PROPERTY ACTS; NECESSARIES; SETTLEMENT; SURVIVORSHIP.

Marriage Acts. The principal Marriage Acts are the Marriage Act, 1823, and the Marriage Act, 1836. The former Act provides for the publication of banns on three successive Sundays before the celebration of a marriage, unless it takes place by ecclesiastical licence (see LICENCE), and requires that it shall be solemnized by a person in Holy orders and before two credible witnesses at least. It also

provides for the case of one of the parties being under age, and for the consent of his or her parent or guardian being given. In certain cases marriages not solemnized in accordance with the provisions of the Act are made void, and where a marriage is solemnized between persons, one of whom is under age, by means of the false oath or fraudulent procurement of one of the parties, the person so offending is liable to forfeit all property which would otherwise accrue to him or her from the marriage.

The Marriage Act, 1836, introduced the certificate of the superintendent registrar of marriages, with or without licence. To obtain the certificate without licence, public notice of the intended marriage must be given for twenty-one days: the certificate with licence only requires one day's notice. Under a registrar's certificate, marriages may be solemnized in any religious building registered for the purpose (except that under a certificate with licence a marriage may not be solemnized in a church or chapel of the Church of England), or it may be solemnized at the registrar's office. If the marriage was celebrated in a registered building it was, until 1st April, 1899, necessary, under s. 20 of the Marriage Act, 1836, that the registrar should be present; but since that date the attendance of the registrar is unnecessary, provided that the marriage is solemnized in the presence of an authorized person appointed by the authorities of the religious building in which the marriage takes place (Marriage Act, 1898, s. 4 and *passim*).

The Foreign Marriage Act, 1892, provides for the marriage of British subjects abroad; the law as to marriage of British subjects with foreigners either in the United Kingdom or abroad is amended by the Marriage with Foreigners Act, 1906; and the Colonial Marriages Act, 1865, makes colonial marriages valid everywhere, subject to certain restrictions. The Marriage of British Subjects (Facilities) Act, 1915, is, in the words of its full title, "An Act to facilitate marriages between British subjects resident in the United Kingdom and British subjects resident in other parts of His Majesty's Dominions or in British Protectorates."

See DOMICILE.

Under the Royal Marriages Act, 1772, no descendant of King George II., other than the issue of princesses married into foreign families, may contract matrimony without the previous consent of the Sovereign, provided, however, that any such descendant, being over the age of twenty-five, may, upon giving twelve months' notice to the Privy Council, contract a marriage of which the King disapproves unless in the meantime both Houses of Parliament expressly declare their disapproval.

See DECEASED WIFE'S SISTER OR DECEASED BROTHER'S WIDOW; GRETNA GREEN; FLEET PRISON.

Marriage-brocage. A marriage-brocage contract is an undertaking to procure a marriage between two persons for reward. Such a contract is void. See POLICY.

Marriage Officer. An official who can celebrate marriages in British possessions abroad as well as in foreign countries (Foreign Marriage Act, 1892, s. 11 (2) (c)). The term includes an ambassador, minister or *chargé d'affaires* (*ib.*, ss. 11 (2) (*b*) (*c*), 24); or, under appointment in writing by the ambassador, etc., the *locum tenens* of the ambassador, etc., or any secretary of the Embassy (Foreign Marriage Order in Council, 1892, Art. I.); and, if holding a warrant from the Secretary of State, any British consul, consul-general, vice-consul, pro-consul, consular agent, governor, high commissioner or resident (Foreign Marriage Act, 1892, ss. 11 (2) (*b*), 24).

Marriage, Value of. A fine which a tenant holding by knight's service had on his marriage to pay to his lord. As to the writs available to the lord, see FORFEITURE OF MARRIAGE; VALUE OF MARRIAGE.

Marriages, Registration of. See REGISTRATION.

Married Women's Property Acts. At common law a husband became on his marriage absolutely entitled to all choses in possession belonging to his wife in her own right (including those acquired after marriage), and to the whole of the rents and profits of her lands during the continuance of the marriage, except in so far as such property was the separate estate (q.v.) of the wife. This rule was broken down in part by the Matrimonial Causes Act, 1857, ss. 21, 25, which protected property acquired by a wife whilst living apart from her husband under a decree for judicial separation or a protection order. it was further infringed by the Married Women's Property Act, 1870, ss. 1, 7, 8, and by the Married Women's Property Act (1870) Amendment Act, 1874 (both repealed by the Married Women's Property Act, 1882), which provided, in effect, that (i) the earnings of a married woman derived from her own exertions; (ii) personal property coming to her during marriage,

either (*a*) under an intestacy, or (*b*) under any deed or will (not exceeding in the latter case £200); and (iii) the rents and profits of real estate descending upon her during marriage, should belong to her, to her separate use; and it was altogether set aside by the Married Women's Property Act, 1882, which provides, by s. 1 (as amended by the Married Women's Property Act, 1893, and by the Bankruptcy Act, 1914, ss. 125, 168, sched. 6), that a married woman shall be capable of holding, acquiring and disposing of property whether real or personal, and of contracting and of suing and being sued and of being made a bankrupt as if she were a *feme sole* (q.v.), and contains a number of subsidiary provisions directed to making a married woman, so far as property is concerned, practically the same as a single woman. It, however, still leaves a husband liable for his wife's torts and for her breaches of trust: but he still also retains his right in her property after death under the curtesy (q.v.) and the *jus mariti* (q.v.): and a wife who has separate property is liable for his maintenance (s. 20) and for that of her children and grandchildren (s. 21) if he or they become chargeable to the parish.

The Act of 1882, and the statutes 47 & 48 Vict. c. 14, 56 & 57 Vict. c. 63, and 7 Edw. 7, c. 18, are collectively entitled the Married Women's Property Acts, 1882 to 1907.

The Married Women's Property Act, 1898, makes a married woman with separate property liable for the support of her parents if they are chargeable to the parish. See SEPARATE ESTATE.

Marshal. In the practice of the King's Bench Division of the High Court, a marshal is an officer who attends each judge on circuit. He is the personal officer of the judge, as an aide-de-camp is of a general, and he performs the duties of secretary. He is appointed for each circuit by the judge; the judge pays his travelling expenses, and out of public funds he gets two guineas for each day during the circuit. He has to swear the grand jury, and is supposed to make an abstract or note for the judge of the nature of the actions tried before him.

The Marshal of the Probate, Divorce and Admiralty Division in Admiralty matters is entrusted with the following duties: Execution of all warrants issued by the Court; appraisement and sale of condemned ships and cargoes; removal of ships, *sub judice*, from port to port on removal being ordered; receipt and subsequent payment into Court of all money arising out of execution of process; ascertaining the sufficiency or otherwise of bail; and the custody of embargoed ships.

The Marshal of the Marshalsea was the keeper of the Marshalsea (q.v.) Prison. See 10 *Co. Rep.* 71*b*, 72*a*.

Marshal, Earl. See EARL MARSHAL.

Marshalling. In the distribution of assets, marshalling takes place where there are two claimants, A and B, and two funds, X and Y, both of which are available to satisfy A's claim, but only Y is available for that of B, and A is compelled to have recourse to the X fund in order that the Y fund may be left for B. Or, what is the same thing, if A has been paid out of the Y fund, B is allowed to have recourse to the X fund, against which he had originally no claim. Thus, if a legacy is given to A charged on real estate, and another not so charged is given to B, the personal estate not being sufficient to pay both, A will be compelled to satisfy his legacy wholly or partially out of the real estate, so that B's legacy may be paid in full out of the personalty.

A testator was formerly said to "marshal his own assets" in favour of a charity when he directed a legacy to a charity to be paid out of his pure personal estate, for the law did not marshal assets in favour of charities, and, therefore, without such a direction, the legacy would, until 1891, abate in the proportion of the impure to the pure personalty. See ABATEMENT; MORTMAIN.

The doctrine of marshalling also applies to mortgages. Thus, if the owner of two estates mortgages them both to one person, A, and then one of them to another, B, without B having notice of A's mortgage, B may insist that A's debt shall be satisfied out of the other estate (the one not mortgaged to B) so far as it will extend.

Marshal of the King's Household. This officer is mentioned in the statute 27 Edw. 3, st. 2, c. 6. He was quite distinct from the Earl Marshal. Apart from his duties in the administration of the Royal Household he, along with the Steward of the King's Household, adjudicated in the Court of the Marshalsea (q.v.), and both of them were nominally judges of the Palace Court (q.v.). The office of Marshal of the King's Household no longer exists.

Marshalsea. As to the Court of the Marshalsea, see that title. The Marshalsea Prison was a debtors' prison, used down to 1842, when it, the King's Bench Prison (q.v.), and the Fleet Prison (q.v.) were abolished and replaced by the Queen's Prison (q.v.). It

had originally been the prison of the Court of the Marshalsea, and had been in existence from, at any rate, the year 1300.

Martial Law. This expression has been used in four distinct senses. It means (1) the law as administered down to 1521 in the Court of Chivalry (q.v.), of which Hale says: "In truth and reality it is not a law but something indulged rather than allowed as a law"; (2) Military law (q.v.); (3) Acts done for the purpose of defeating invaders or rebels; (4) "The suppression of ordinary law and the temporary government of a country or parts of it by military tribunals," to use the words of Dicey, whose definition should be expanded by adding "when this is done in pursuance of a proclamation by the Crown or of notice by the military authorities," for if it is done under the authority of statute, such as the Restoration of Order in Ireland Act, 1920 (10 & 11 Geo. 5, c. 31), there is no martial law.

Martial law is now usually and properly used in the fourth of the senses mentioned above. The expression in this sense is, however, something of a misnomer. Martial law in this sense is, in fact, no law at all. It is not merely extra-legal; it is also illegal. There is no provision for any such law in our legal system; and acts done in pursuance of it require to be covered by an Act of Indemnity in order to protect from legal proceedings those by or by whose orders such acts were done.

Martinmas. The feast of St. Martin, 11th November: formerly sometimes called Martinmas in Winter, in order to distinguish it from the feast of the Translation of St. Martin, 4th July. In many parts of England it was, down to our own time, the general time of hiring farm servants. Church-scot (q.v.) used to be paid on this day. See OLD MARTINMAS.

Masculine. Unless the contrary intention appears, the masculine includes the feminine in every Act of Parliament passed after the year 1850. (Interpretation Act, 1889, s. 1.)

Massachusetts Company. See COMPANIES, CHARTERED.

Master and Servant. The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labour for an agreed period. The test of such a service seems to be, first, that the servant is bound to obey the reasonable commands of his master to do all acts falling within the scope of his employment, and, secondly, that the master has the power of dismissing the servant on his neglecting his duty, or for incompetence or gross misconduct, or on giving notice of dismissal in accordance with the express or implied terms of the contract.

It would also seem that a material difference in social position is essential to the relation of master and servant, for tutors, clerks, governesses, opera singers, and the like, are not servants; and that the service must be exclusive, *i.e.*, that the servant cannot work for anyone else, without his master's permission, unless his service is limited to certain times or otherwise.

Servants are generally divided into menial (q.v.) or domestic (q.v.) servants, labourers and workmen, and apprentices. The rules of law as to the respective rights and duties of the master and servant in the absence of express agreement vary to some extent according to the nature of the employment.

As regard strangers, the relation of master and servant affects them chiefly in the following respects:—The master may bring an action against any person for beating or maiming his servant, if he thus loses the services of his servant, and thereby suffers actual damages (see SEDUCTION; SERVICE; TORT), and the master has an action against any person who knowingly entices away a servant—or any other person under a contract of service—or harbours and detains him after having been apprised of the former contract. On the other hand, the servant is frequently the agent of his master for certain purposes, and accordingly has power to bind him by his acts (see AGENT); and if the servant in the course of his employment tortiously causes injury to any person, the master is liable. Therefore, if a servant in driving his master's carriage on his master's business injures a person by negligent driving, the master is liable in damages to that person, even although the servant may have gone out of his proper course for his own business or amusement; but if the servant takes the carriage out without his master's orders and for his own business or amusement, then the master is not liable for his negligence.

Under the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), justices of the peace have jurisdiction in many cases where questions arise as to the rights or liabilities of either party to a contract of service, and County Courts also have jurisdiction in some of those matters. But this Act (see s. 10) does not apply to domestic or menial servants.

See COMMON EMPLOYMENT; COUNCIL OF CONCILIATION; EMBEZZLEMENT; FACTORIES; FALSE CHARACTER; MALE SERVANTS; TRUCK ACTS; WORKMEN'S COMPENSATION.

Master in Lunacy. This is an officer of the Lord Chancellor, as guardian of lunatics. His duties are of two kinds: first, to hold commissions or inquiries to find whether persons alleged to be insane are incapable of managing themselves and their affairs; secondly, to inquire as to the property, relations, etc., of persons found lunatic, and to superintend the management and employment of the property for the benefit of the lunatic. (See LUNACY.) He must at the time of his appointment be a barrister of not less than ten years' standing (Lunacy Act, 1890, s. 111 (3)). There were originally two Masters in Lunacy (*ib.*) but there is now only one, who is assisted by an Assistant Master (Lunacy Act, 1922, s. 1). The jurisdiction of the Master, as regards administration and management, may be exercised by the Assistant Master, under the direction of the Master (*ib.*). The Assistant Master must at the time of his appointment be a barrister or solicitor of five years' standing or an officer of the Master (*ib.*).

See COMMISSIONERS IN LUNACY.

Master of the Bench. This is the full title of any bencher (q.v.) of the four Inns of Court. In matters relating to the business of the Inn, a bencher is described by other members of the Inn as Master Brown, or as the case may be.

Master of the Buckhounds. This was one of the officers of the royal household down to 1901, when the royal buckhounds were abolished and the office of Master of the Buckhounds ceased to exist. The Master had been one of the officers who went in and out with the Ministry. His function was to act as master of the packs of staghounds which, at the cost of the Civil List, hunted the country to the west of Windsor. The Master was always a peer. He was in theory a subordinate of the Master of the Horse.

Master of the Court of Wards and Liveries. The chief official of the Court of Wards and Liveries (q.v.) He was abolished, along with the court, in 1660.

Master of the Crown Office. See KING'S CORONER.

Master of the Faculties. See FACULTY.

Master of the Horse. This official was originally in actual charge of the royal stables. That, however, is now entrusted to a permanent official known as the Crown Equerry and Secretary to the Master of the Horse. The Master of the Horse, who is always a peer of high rank, is one of the three principal officers of the household, the first being the Lord Steward (q.v.) if and when that functionary exists, and the second being the Lord Chamberlain (q.v.). The Master of the Horse, like the Lord Chamberlain and other chief officers of the household, goes in and out with the Ministry. His chief present function is to attend the King on State occasions.

Various holders of the office during the last three hundred years have claimed to act as Serjeant of the Silver Scullery when a coronation took place; but this claim does not appear to have ever been established.

Master of the Household. The officer of the royal household who is now styled the Lord Steward (q.v.), was anciently sometimes styled the Grand Master of the King's Household, but the latter title has been disused for centuries, and the title of Master of the Household is now applied to a permanent subordinate officer of the department of the Lord Steward. The management of the household is in the hands of this officer. See SENESCHAL.

Master of the King's Musters. See MUSTER-MASTER.

Master of the Mint. Before 1870 there was an official known as the Master of the Mint who had charge of the Mint (q.v.): there was a Deputy Mint Master: and each of them was paid a salary. Now, under the Coinage Act, 1870, s. 14, the Chancellor of the Exchequer for the time being is the "Master Worker and Warden of His Majesty's Royal Mint in England," but without salary or functions other than the function of suspending, promoting, etc., the salaried deputy masters and other officials who do the work of the Mint and who are appointed by the Treasury.

Master of the Ordnance. An officer, dating from the reign of Henry VIII., to whom was entrusted the care of the King's artillery and ordnance or munitions of war. His modern representative in normal times is the Master-General of the Ordnance, a military officer who is one of the members of the Army Council (q.v.). The officer, who is at present known as Master-General of the Ordnance, is an officer in the Royal Artillery, and is *ex officio* a member of the Army Council (q.v.). See ORDNANCE, BOARD OF.

Master of the Posts. Henry VIII. created this officer for the purpose of making arrangements to have post-horses provided at such

places and in such numbers as to ensure the speedy transit of the King's letters. In the reign of Elizabeth the transmission of foreign correspondence, which had previously been arranged by merchants, was entrusted to the Master of the Posts, whose title was changed to "Chief Postmaster." Between 1635 and 1660 the Crown and the Cromwellian authorities asserted the sole right to carry letters, and the Chief Postmaster become the "Postmaster General for Foreign Parts."

See POST OFFICE; POSTMASTER-GENERAL.

Master of Reports and Entries. An officer of the old Court of Chancery. The office was abolished by s. 5 of the Court of Chancery Act, 1855, as from the occurrence of the first vacancy after the passing of that Act.

Master of the Rolls. The office of Master of the Rolls is one of great antiquity and high rank. He was originally keeper of the records (see RECORD OFFICE) and acted as assistant to the Lord Chancellor, like the other masters in Chancery (see MASTERS). Subsequently, in the reign of Edward I., he acquired judicial authority in matters within the jurisdiction of the Court of Chancery, and in the reign of Henry VI. bills for relief were addressed to him as well as to the Lord Chancellor. In more modern times, any suit, petition, etc., could be heard in the first instance by the Master of the Rolls, as well as by the Vice-Chancellors. But down to 1827 the Master of the Rolls sat in the evening from six to ten o'clock, the theory being that he, as being only the deputy of the Lord Chancellor, ought not to sit at the same time as the Lord Chancellor, who up to then had dealt with such matters as now come before a judge of the Chancery Division. Until 1873 he was qualified to sit in the House of Commons. (See OFFICE OF PROFIT.) By the Judicature Act, 1873, s. 5, the Master of the Rolls was made a member of the High Court of Justice, and (s. 6) an *ex-officio* member of the Court of Appeal, while under the Judicature Act, 1881, s. 2, he became a judge of the Court of Appeal only (see those titles), but he still retains his non-judicial duties as custodian of the records. He (see the Judicature Act, 1873, s. 17) admits solicitors of the Supreme Court (*ib.* s. 87). His powers as to matters formerly appertaining to the Petty Bag Office are preserved by the Solicitors Act, 1888, s. 5.

Master of the Temple. This is the clergyman of the Temple Church. His salary is paid partly by the Crown and partly by the two Temples; and the Temples provide him with a residence near the Temple Church. The nomination is in the hands of the Crown. These arrangements are provided for by the lease from James I. under which the Temples are held.

Compare READER.

Master of the Wardrobe. An officer of the royal household who had charge of the robes of dead kings and queens and of all curtains, bedding, cloth for liveries, etc., in the palaces of the reigning sovereign. He is mentioned in the statute 39 Eliz. c. 7. He has disappeared, although the Mistress of the Robes (q.v.) remains.

Master of the Wards. This was the title of the judge of the Court of Wards and Liveries (q.v.): see the statute 32 Hen. 8, c. 46, s. 2.

Masters Extraordinary. The full title of these officers was "Masters Extraordinary in Chancery"; and under that designation they were abolished by the statute 16 & 17 Vict. c. 78, which created the London Commissioners (q.v.) and the Commissioners for Oaths (q.v.) to perform the duties vested in the Masters Extraordinary. Masters Extraordinary were first heard of in the reign of James I.: see Hargrave's Law Tracts 294.

Masters in Chancery. The full title of these officers, whose office was of great antiquity, was the "Masters in Ordinary of the High Court of Chancery." They were eleven in number, or twelve including the Master of the Rolls (q.v.). They were assistants of the Lord Chancellor, and also of the Master of the Rolls after the latter had acquired judicial authority. Down to the end of the eighteenth century they occasionally sat in Court with the Lord Chancellor and the Master of the Rolls; but subsequently they sat only in chambers for the discharge of functions which were partly ministerial and partly judicial. They, except one who received a salary of about £300 in addition to fees, were, in 1798, paid only by fees—many of immemorial origin—the amounts whereof averaged, in the case of different Masters, from about £1,300 to about £1,100 a year. (See *Commons Committee's Reports* (1803), Vol. 13, p. 224). The Court of Chancery Act, 1852, after reciting that "proceedings before the Masters in Ordinary of the High Court of Chancery are attended with great delay and expense," abolished the Masters by s. 1, and s. 16 provided for the appointment of eight Chief Clerks (q.v.), two being appointed by the Master of the Rolls and two by each of the three Vice-Chancellors.

The Masters in Ordinary were so called in order to distinguish them from the Masters Extraordinary (q.v.).

Masters of the King's Bench, Common Pleas and Exchequer. The Superior Courts (Officers) Act, 1837, provided that there should be in each of these Courts five officers, to be called the masters of each Court, to conduct the civil business thereof. In exercise of powers given by the Judges Chambers (Despatch of Business) Act, 1867, s. 1, rules were made empowering any of these masters to transact all business, with certain specified exceptions, which a judge of his Court might transact in chambers. The Judicature Act, 1873, s. 77, attached them to the Supreme Court. Upon the establishment of the Central Office (q.v.) by the Judicature Officers Act, 1879, they became, under that Act, Masters of the Supreme Court. As to their present powers see Ord. 54, rr. 12, 12A. See PROTHONOTARY.

Masters of the Supreme Court. These at present consist of (1) the Masters in the Chancery Division, who are the Chief Clerks (q.v.) and the Clerks of Record and Writs (q.v.) under another name; (2) the Masters of the King's Bench Division, who occupy the same positions and do practically the same work as the Masters of the King's Bench, Common Pleas and Exchequer (q.v.), (the present number is seven, of whom the senior is also King's Coroner (q.v.): there are also two assistant masters); (3) the eleven Masters of the Supreme Court who carry out in the Central Office (q.v.) the taxation of the costs (q.v.) of all cases in the Chancery and King's Bench Divisions.

Mast-feeding. Pannage (q.v.).

Matches. The manufacture or importation into the United Kingdom of matches in the manufacture whereof white phosphorus is used, has been unlawful since 31st December, 1909, under the White Phosphorus Matches Prohibition Act, 1908, which also provides that the Board of Trade may compel the owner of any patent, existing on 21st December, 1908, for the manufacture of matches, other than "safety matches" without the use of white phosphorus, to grant to any intending manufacturer a licence to use such patent.

The Finance (New Duties) Act, 1916, s. 3, imposes (1) a customs duty upon imported matches at the rate of three shillings and sixpence per ten thousand; (2) an excise duty at the rate of three shillings and fourpence per ten thousand on home-made matches. It also requires manufacturers of matches to take out annually a licence upon which there is an excise duty of one pound.

Material; Materiality. The question whether an untrue representation or a concealment avoids a contract to the subject-matter of which it relates, or whether an erasure or alteration avoids a written instrument, depends in general upon whether the misrepresentation, concealment, erasure or alteration is material; and the question whether it is material depends partly on the facts of the case and partly on the nature of the transaction. Thus, altering the date of a cheque is a material alteration. (See ALTERATION). So if during the negotiation of a marine insurance, a statement is made which has no real bearing on the risk, but which, nevertheless, influences the mind of the underwriter, as, for instance, an assertion that previous insurances have been obtained on the same ship at a low premium, the misrepresentation will avoid the policy. See UBERRIMÆ FIDEI.

Maternal. See DESCENT.

Maternity Benefit. "Payment in the case of the confinement of the wife, or, where the child is a posthumous child, of the widow of an insured person or of any other woman who is an insured person, of a sum of forty shillings . . ." (National Insurance Act, 1911, s. 8 (1) (*e*); National Health Insurance Act, 1920, s. 2 (2). "Insured person" means one insured under the Acts. The benefit, it will be noted, is payable in respect of an illegitimate child. See RE-INSURANCE.

Matricide. See PARRICIDE.

Matrimonial Causes include suits for divorce, nullity of marriage, judicial separation, damages for adultery, restitution of conjugal rights, and suits of jactitation of marriage. See the various titles; also ALIMONY; PROBATE, DIVORCE AND ADMIRALTY DIVISION.

Matrimonium. This word was anciently sometimes used as meaning property descending *ex parte materna* (q.v.).

Matrimonium subsequens legitimos facit quoad sacerdotium non quoad successionem propter consuetudinem regni quæ se habet in contrarium (*Co. Litt.* 345). (A subsequent marriage makes children legitimate as regards Holy orders, but not (because of the custom of this kingdom, which is to the contrary effect) as regards succession [to land]). The canon law forbade the ordination of bastards, but it held that persons born out of wedlock were legitimated by a subsequent marriage of

their parents; the common law recognised no such legitimation. See ANTENATUS.

Matrons. See JURY.

Matter. See ACTIONS AND MATTERS.

Maturiora sunt vota mulierum quam virorum (6 *Rep.* 71). (The promises of women are made earlier than those of men.) This merely means that the minimum age for a valid marriage is less for a woman than for a man. See CONSENSUS.

Maundy Thursday; Maundy Money. See ALMONER.

Maxime, so called **quia maxima est ejus dignitas et certissima auctoritas, atque quod maximè omnibus probetur** (*Co. Litt.* 11). ("*Maxime,*" so called because its dignity is the greatest and its authority the most certain, and because it is universally approved by all.) "*Maxime*" is, of course, "maxim."

Mayhem consists in violently depriving another of the use of a member proper for his defence in fight, such as an arm, a leg, an eye, etc. It was originally both a civil injury and a criminal offence, but by modern statutes the law relating to felonious maiming and wounding has been amended, so that there is no legal difference between depriving a person of a member proper for his defence in fight and causing him any other grievous bodily harm (see MALICIOUS INJURIES TO THE PERSON), except that everyone has a right to consent to the infliction upon himself of any bodily harm not amounting to a mayhem.

Mayhem, as a civil injury, seems still to exist, but the use of the word is obsolete.

See APPEAL OF FELONY.

Mayor. See MUNICIPAL CORPORATION; STAPLE.

Mayor's and City of London Court. A new Court formed, as from 1st January, 1921, by the amalgamation of the Mayor's Court of London (q.v.) and the City of London Court (q.v.) (Mayor's and City of London Court Act, 1920 (10 & 11 Geo. 5, c. cxxxiv.)). The new Court has all the powers and jurisdictions of the two old Courts (*ib.* s. 1); the judges are the judges of the old Mayor's Court, with one additional judge—or two if the Lord Chancellor thinks two necessary (s. 2). Procedure is governed by the Mayor's and City of London Court Rules, 1920 (S. R. & O., 1920, No. 2382).

Mayor's Court of Bristol. By charter dated 8th August, 1373, Edward III. regularised this Court, which had assumed a jurisdiction analogous to that of the Mayor's Court of London. But it had never such a vigorous existence as the London Court. Within three hundred years from the date of the charter, the Bristol Court had fallen into disuse.

See CONCESSIT SOLVERE.

Mayor's Court of London was an inferior Court having jurisdiction in civil cases where the whole cause of action arose within the city of London, which did not for this purpose include Southwark or the river Thames; if, however, the debt or damage claimed in an action did not exceed £50, the Court had jurisdiction, provided that the defendant dwelt or carried on business within the city at the time the action was brought, or within six months previously, or that part of the cause of action arose within the city (Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. clvii.), s. 12). Actions of ejectment, and actions under the Bills of Exchange Act, might be brought in the Court, and also certain proceedings peculiar to the city. It was the Court of Appeal from the Chamberlain Court (see CHAMBERLAIN OF THE CITY OF LONDON).

The Court had two "sides" or divisions—a legal and an equitable—but of late years the equitable jurisdiction had almost fallen into disuse. It had no jurisdiction in replevin (q.v.).

An ordinary action was commenced by the plaintiff entering at the office of the registrar of the Court what was called an action, which was in the nature of a præcipe (q.v.), giving the names of the parties and the nature of the claim; a copy of this action, together with a notice to the defendant to appear to the action, and particulars of the claim, was then issued and served on the defendant: this document was sometimes called a "copy action and notice," but more commonly a plaint. The subsequent proceedings were similar to those in actions at law before the Judicature Acts, 1873 and 1875, as to which, see PLEADINGS; CONCESSIT SOLVERE; RECORD; POSTEA. Suits on the equitable side of the Court followed the practice in equity of the old Court of Exchequer before the passing of the Court of Chancery Act, 1841. As to the procedure in foreign attachment, see that title.

For the rules of the Court see S. R. O. Rev. 1904, Inferior Courts (E), pp. 95, 107 and S. R. and O. Rev. 1908, pp. 1,004-6.

The judge of the Court was the Recorder, or, in his absence, the Common Serjeant (Mayor's Court of London Procedure Act, 1857, s. 43), or the assistant judge appointed under the Borough, etc., Courts of Record Act, 1872. The lord mayor and the aldermen

were in theory the judges; but they never sat.

See MAYOR'S AND CITY OF LONDON COURT; COMMON PLEADER.

Mead. This seems to have been the same as metheglin (q.v.). Of course, it usually meant a meadow.

Mead-silver. An annual payment of one penny an acre formerly paid by the parishioners of Cobham as a composition for tithe-hay, that is to say, tithes of hay.

Meals for Children. A local education authority may provide at the public expense meals for children attending an elementary school who are insufficiently fed (Education (Provision of Meals) Act, 1906, s. 3); and they may do this without the sanction of the Board of Education (Education (Provision of Meals) Act, 1914, s. 1). These provisions are of great use, not merely to those who are inevitably poor, but to persons who do not choose to accept wages out of which they could perfectly well feed their children. The cost of the meals may be recovered from the latter class of persons (Act of 1906, s. 2); but it never is.

Mease or **Mese** is Norman-French for a house. In the form "mease" it also means a customary measure of herrings, containing in various places 500, 525, 612 or 615 fish.

Measondue. "Measondue is an appellation of divers Hospitals in this Kingdome" said the *Termes de la Ley* in 1641. See the statute 1 Eliz. c. 21, s. 34, and the title of the statute 39 Eliz. c. 5. The word is a corruption of *maison de Dieu*.

Measure. An enactment by the National Assembly (q.v.), such, for instance, as the Parochial Church Councils (Powers) Measure, 1921. A measure is in effect an Act of Parliament.

Measure of Damages. See DAMAGES.

Measurer. (See AULNAGER.) In respect of their metage (q.v.) rights the Corporation of the City of London was the measurer for the Port of London.

Measuring Money. A duty exacted, in addition to alnage, on cloth. It was abolished in the reign of Henry IV. See ALNAGE.

Mechanical Lighters. Excise and import duties were imposed upon these substitutes for matches by the Finance Act, 1916, s. 10: but that section has been repealed by the Finance Act, 1921, s. 5.

Mediators of Questions. Six persons appointed under the statute 27 Edw. 3, st. 2, c. 24, who decided questions arising between merchants as to whether wool was marketable or properly packed, etc.

Medical Jurisprudence. See FORENSIC MEDICINE.

Medical Practitioner. The Medical Acts are the Medical Act, 1858, the Medical Act, 1859, the Medical Acts Amendment Act, 1860, the Medical Practitioners Act, 1876, and the Medical Act, 1886. They apply to both physicians and surgeons, both of whom are medical practitioners: see s. 2 of the Act of 1858.

It is an offence (Act of 1858, s. 40) for any person to pretend falsely that he holds any medical or surgical qualification. Unless there be such false pretence, no unqualified person commits any offence whatever by merely practising medicine or surgery: but he does so at the risk of civil or criminal proceedings in respect of such consequences as may result if he treats a patient without proper skill; and he, like a qualified but unregistered medical practitioner, cannot recover in any Court for medical attendance or for medicine which he has both prescribed and supplied (Act of 1858, s. 32).

Under bye-law clxxii. of the Royal College of Physicians (q.v.) no registered medical practitioner who is a fellow of that college may sue for his fees; and it is provided by the Act of 1886, s. 6, that this bye-law is a bar to any proceedings by such fellow for the recovery of his expenses, charges, or fees.

Registered medical practitioners are exempt from serving on juries and inquests, or in the Militia, and in various municipal and similar offices (Act of 1858, s. 35).

See INFAMOUS CONDUCT; ROYAL COLLEGE OF PHYSICIANS; ROYAL COLLEGE OF SURGEONS.

Medietas linguæ. See JURY.

Medio acquietando, De. An obsolete writ defined by the old writers as "a judicial writ to distrain a lord for the acquitting of a mean lord from a rent which he formerly acknowledged not to belong to him." See ACQUITTAL.

Medletum. A fray or medley (*Bract. lib.* 3, *tract.* 2, *c.* 35). Other forms are *medlea*, *medleta*.

Medsypp. Used in the *Placit.* 9 Edw. 1, as meaning a harvest supper given to labourers.

Meeting. In the law of bankruptcy the most important kind of meeting is the first meeting of creditors, which is held (Bankruptcy Act, 1914, s. 13), as soon as possible after a receiving order has been made, for the purpose of deciding whether a composition or scheme of assessment shall be accepted or whether the debtor shall be adjudged bankrupt. The trustee in a bankruptcy is bound to have regard to the directions of the creditors

in administering the estate, s. 79 (i); he may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes (s. 79 (2)); and he is required to do so if one-sixth in value of the creditors so demand (*ib.*). A general meeting may also be held for the purpose of removing the trustee or appointing a new trustee (s. 95).

In the law of companies, meetings are of three kinds, statutory, ordinary and extraordinary, or, as the two latter are also called, general and special. Ordinary or general meetings are usually held at stated times and for the transaction of business generally. Extraordinary or special meetings are held as occasion may require for the transaction of some particular business, which ought to be specified in the notice convening the meeting. The one meeting may be both ordinary and extraordinary. Every company formed under the Companies Acts, and limited by shares, is bound (Companies Act, 1908, s. 65) to hold a general meeting, known as a statutory meeting, not less than one month or more than three months after it is entitled to commence business and (s. 64) to hold an ordinary general meeting once at least in each calendar year and not more than fifteen months after the last such meeting. It has been decided that a single person cannot constitute a meeting.

See RESOLUTION; PUBLIC MEETING; SEDITIOUS MEETING.

Meiny. The king's household; see the statute 1 Rich. 2, c. 4.

Meldfeoh. The reward given to an informer in Saxon times: see *Leg. Inæ*, c. 20.

Meliorating Waste. See WASTE.

Melior est conditio defendentis. (The position of the defendant is the stronger.) Mr. Broom (8th ed.) cites this maxim: but its source does not appear.

Melior est conditio possidentis et rei quam actoris (4 *Inst.* 180). (The position of the possessor is the better; and that of the defendant is better than that of the plaintiff.) See also IN ÆQUALI JURE, ETC. and IN PARI CAUSA.

Melior est conditio possidentis, ubi neuter jus habet (*Jenk. Cent.* 118). (The condition of the possessor is better [than that of one seeking to oust him] where neither of them has a clear title [to the matter in dispute].)

Melior est justitia verè præveniens, quam severè puniens (3 *Inst. Epil.*). (The justice which is really preventive is better than the justice which punishes severely.) Compare JUSTITIA EST DUPLEX, ETC.

Meliorem conditionem suam facere potest minor, deteriorem nequaquam (*Co. Litt.* 337). (A minor is able [in law] to make his condition better, but not by any means to alter it for the worse.) This means that within certain limits the law protects a minor against his own improvidence. See INFANT; MINOR ANTE, ETC.; SUCCURRITUR, ETC.

Melius inquirendum. See AD MELIUS INQUIRENDUM.

Memoranda Rolls. These Rolls, now in the Record Office, date from 1199 to 1848. They were compiled by the King's Remembrancer and the Treasurer's Remembrancers for the use of the Barons of the Exchequer.

Memorandum. In a policy of marine insurance the memorandum is a clause inserted to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature and for minor damages. It begins as follows: "N.B.—Corn, fish, salt, fruit, flour and seed are warranted free from average, unless general or the ship be stranded"; meaning that the underwriters are not to be liable for damage to these articles caused by sea-water or the like. See AVERAGE; POLICY OF ASSURANCE.

To the particulars and conditions of sale of land which is to be sold by auction there is always appended a memorandum setting out that such and such a person has been declared the purchaser of the property, at such and such a price, and this must be signed by the purchaser and by the auctioneer as agent for the vendor. See CONDITIONS OF SALE; PARTICULARS OF SALE.

Memorandum of Alteration. Formerly where a patent was granted for two inventions, one of which was not new or not useful, the whole patent was bad, and the same rule applied when a material part of a patent for a single invention had either of those defects. To remedy this, the statute 5 & 6 Will. 4, c. 83, empowered a patentee (with the *fiat* of the Attorney-General) to enter a disclaimer, or a memorandum of an alteration in the title or specification of the patent, not being of such a nature as to extend the exclusive right granted by the patent; and the Patent Law Amendment Act, 1852, s. 39, provided that thereupon the memorandum was deemed to be part of the letters patent or the specification. Subsequently, the Patents, Designs and Trade Marks Act, 1883, s. 18, provided that either an applicant for a patent or a patentee might apply in writing at the Patent Office for leave to amend his specification by way of either correction, disclaimer, or alteration (but not

by way of enlargement or of substituting a practically different specification), and that the amendment, if leave therefor was obtained pursuant to the section, should form part of the specification; and s. 21 of the Patents and Designs Act, 1907 (which is the enactment now in force), is to the like effect. See DISCLAIMER.

Memorandum of Association. See ASSOCIATION, MEMORANDUM OF.

Memorial. In the Land Registries of Middlesex, York, etc., which are registries of deeds and not of titles, the registration of a deed or other document is effected by leaving it at the registry together with a memorial under the hand and seal of one of the parties to the deed. The memorial is an abstract of the material parts of the deed, with the parcels (q.v.) at full length, and concludes with a statement that the party desires the deed to be registered. The execution of the deed and memorial is proved by the oath of an attesting witness. See LAND REGISTRY.

"Memorial" also signifies a petition or statement submitted to a person or body.

Memory. In the old books, when a person alleges in legal proceedings, that a custom or prescription has existed from time whereof the memory of man runneth not to the contrary, that is as much as to say that no man then alive hath heard any proof of the contrary. This is also called time of living memory, as opposed to time of legal memory, which runs from the reign of Richard I., because the Statute of Westminster I. (3 Edw. 1, c. 8) fixed that period as the time of limitation for bringing certain real actions. (See LIMITATION.) As to the practical importance of the distinction, see ANCIENT MESSUAGES; CUSTOM; LOST GRANT; PRESCRIPTION.

Menaces. See BLACKMAIL and LIBEL, as to demanding money, etc., with menaces of various kinds other than threats of physical violence. As to demanding money, etc., with threats of physical violence, see the Larceny Act, 1916, s. 30.

Menial Servants. Those employed in or about a house, the word menial being derived from the Middle English *meine*, a household. The housekeeper of a large hotel, a steward and a resident governess are not menial servants, for they are not in strictness servants at all: but a huntsman, a head gardener, a pot-boy, and a man employed to do work about a garden and stables, all come within the definition. The fact that a servant lives elsewhere than in his employer's house does not prevent his being a menial servant; but it will prevent him from coming within the meaning of the expression "domestic servant" (q.v.).

In the absence of an express agreement the engagement of a menial or of a domestic servant is by the year; but the engagement is terminable during the course of the year by a month's notice on either side or by the payment of a month's wages in lieu of notice.

Mensa. Stated by Jacob to have meant patrimony, or goods and necessaries; from the reference which he gives—*dominicum est proprie terra ad mensam assignata*—it looks, however, very much as if *mensa* meant merely "table," in the sense of viands for household consumption.

Mensa et thoro, Divorce à. See DIVORCE.

Mens rea. (A guilty mind.) See ACTUS NON FACIT REUM NISI MENS SIT REA.

Mens testatoris in testamentis spectanda est (*Jenk. Cent.* 277). (In [construing] wills regard is to be had to the intention of the testator.) Compare VERBA INTENTIONI, ETC.

Mensura regalis. The ancient name of the standard measure of capacity used when the Clerk of the Markets (q.v.) still had functions to perform. See the statute 16 Car. 1, c. 19, which, however, does not make it clear what precisely the measure was.

Mental Deficiency. The Mental Deficiency Act, 1913, s. 1, enacts that Idiots, Imbeciles, Feeble-minded Persons and Moral Defectives (see those titles) shall be deemed defectives within the meaning of that Act. The Act provides for the care of such persons.

See BOARD OF CONTROL; COMMISSIONERS IN LUNACY.

Mentiri est contra mentem ire (3 *Buls.* 260). (To lie is to go against the mind; that is to say, a lie is a statement which he who makes it knows to be untrue.) Compare OS, ETC.; SERMO, ETC.

Mercantile Agent. See AGENCY.

Mercantile Law includes the law relating to bills of exchange, contracts of affreightment, marine insurance, etc.

Mercantile Marine Fund. The Merchant Shipping Act, 1894, s. 676, provided that a number of fees and other receipts, including light dues, mentioned in that section should be paid into the Mercantile Marine Fund; and s. 677 provided that the fund should be charged with the expenses of a large number of services relating to ships, including the lighthouse service. The Merchant Shipping (Mercantile Marine Fund) Act, 1898, abolished the Mercantile Marine Fund. It enacted that the receipts specified in s. 676 of the Act of 1898, other than light dues, should be paid

into the Exchequer; that the light dues should be paid into a fund called the General Lighthouse Fund; and that the expenses incurred by a general lighthouse authority under s. 531 of the Act of 1894, and various other expenses in connection with lighthouses, etc., should be charged to the General Lighthouse Fund.

Mercantile Marine Offices. See the Merchant Shipping Act, 1894, ss. 246-250.

Merchandise Marks Act, 1887. The object of the Act is to prevent the fraudulent marking of merchandise and the fraudulent sale of merchandise falsely marked or not bearing the proper mark. Its principal provisions are to make forging or falsely applying any trade mark or making or possessing any die, etc., for forging a trade mark, or applying any false trade description to goods, or wrongfully selling goods with forged or false trade marks or false trade descriptions, offences punishable on indictment or summarily. The effect of s. 16 of the Act is that goods made abroad and imported into this country are liable to seizure and forfeiture if marked in such a way as to lead purchasers to suppose that they were made in the United Kingdom: and this section has led to the marking of foreign goods with the words "Made in Germany," or as the case may be. Sections 7 and 8 contain special provisions which aim at preventing foreign watches being sold as of British make.

"For the purposes of this Act. . . the expression 'trade mark' means a trade mark registered in the register of trade marks kept under the *Trade Marks Act, 1905*, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of the *ninety-first section of the Patents and Designs Act, 1907*, are by Order in Council for the time being applicable" (Merchandise Marks Act, 1887, s. 3 (i), as impliedly amended by the Acts of 1905 and 1907; the amendments are shown in italics).

The Act of 1887 and the statutes 54 & 55 Vict. c. 15, 57 & 58 Vict. c. 19, 1 & 2 Geo. 5, c. 31, are collectively entitled the Merchandise Marks Acts, 1887 to 1911.

See FALSE TRADE DESCRIPTION; TRADE DESCRIPTION; TRADE MARKS.

Merchant Adventurers. This association grew out of the rivalry between a number of English merchants and the Hanse. In 1505 Henry VII. conferred on them the title of the *Fellowship of Merchant Adventurers*. At that time their chief centre was Calais. Subsequently they moved to Antwerp. In 1564 Elizabeth granted them a charter incorporating them as the *Governor, Assistants, and Fellowship of the Merchant Adventurers of England* with liberty to trade in what is known as the north of Germany. They then operated chiefly from Hamburg, and came to be known as the Hamburg Company. By the end of the seventeenth century they had ceased to be an active body.

See HANSE; STEELYARD.

Merchant's Risk. See RISK.

Merchant Shipping. The statute law as to merchant shipping was consolidated by the Merchant Shipping Act, 1894. It is the longest Act in the statute books. It and the statutes 60 & 61 Vict. c. 59, 61 & 62 Vict. c. 14, 61 & 62 Vict. c. 44, 63 & 64 Vict. c. 32, 6 Edw. 7, c. 48, 7 Edw. 7, c. 52, 1 & 2 Geo. 5, c. 42, 2 & 3 Geo. 5, c. 31, 4 & 5 Geo. 5, c. 42, 4 & 5 Geo. 5, c. 50, 6 & 7 Geo. 5, c. 41, 9 & 10 Geo. 5, c. 38, are by various sections of those Acts, entitled the Merchant Shipping Acts, 1894 to 1919. Various matters referred to in those Acts are dealt with under the appropriate heads. No attempt can be made here to deal comprehensively with the Acts.

Merchants, The Statute of. See STATUTUM DE MERCATORIBUS.

Merchenlage. In Anglo-Saxon times this was the law of the Kingdom of Mercia or LEX MERCIORUM.

See DANELAGE.

Merchet. See MARCHET.

Mercimoniatus Angliæ. According to Knighton (*Lib.* 1, c. 5), who wrote in the fourteenth century, this was something in the nature of customs duties in the early Norman period.

Mercy, Prerogative of. See PARDON; PREROGATIVE.

Merger is that operation of law which extinguishes a right by reason of its coinciding with another right, of greater legal worth, in the same person. By "operation of law" is meant that it may take place independently of the wishes or intention of the parties; and by "greater legal worth" is meant that one right in estimation of law, though not necessarily in fact, is of higher value than the other.

I. In the law relating to rights of action, when a person takes or acquires a remedy or security of a higher nature in legal estimation than the one which he already possesses for the same right, then his remedies in respect of the minor right or security merge in those attaching to the higher one. Thus, if a bond is taken for a simple contract debt, the remedy upon the simple contract is extinguished, and

therefore an action for the debt must be brought on the bond; again, if judgment is recovered in such an action, the right of action on the bond is merged in the judgment, and therefore no second action can be brought on the bond.

II. In the law of property, merger takes place either according to the rules of law or according to those of equity.

At law, when a greater and a less estate meet in the same person without any intermediate estate, the less estate is merged in the greater, so as to cease to exist. The greater estate is thus accelerated, but not enlarged. (See ENLARGEMENT.) Thus, if A is tenant for life of land, and the reversion in fee afterwards descends to or is otherwise acquired by him, his estate for life merges in the fee, and he thus becomes tenant in fee in possession. But if a person has two estates in different rights, as where he has one in his own right, and the other as executor, there will in general be no merger. An estate for life being, in the estimation of the law, greater than any term of years however long, it follows that when a person holding a term for 1,000 years becomes entitled to the land for an estate for life, the term merges in the life estate. Merger or its consequences are in some instances prevented by statute; thus, by force of the Statute *De Donis Conditionalibus* (see ESTATE TAIL), an estate tail does not merge in the freehold (see ENLARGEMENT); the rights incident to a reversionary term which has merged are preserved by the Law of Property Act, 1845, s. 9; and now by the Judicature Act, 1873, s. 25 (4), there can be no merger, by operation of law only, of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity. This enactment was apparently meant to recognise the rule which prevailed in equity before the Act, namely, that where the estate of a trustee accidentally merges, the *cestui que trust* shall not thereby be injured.

In equity, where a legal and an equitable estate, equal and co-extensive, unite in the same person, the latter merges in the former. Where an estate of inheritance in land and the right to a charge upon it become vested in the same person absolutely (as where a person entitled to have a portion raised out of land becomes entitled to the land in fee simple), the charge will merge unless kept alive, or unless it is to the owner's interest that it should not merge. There is a general leaning against merger in Courts of Equity, except in those cases where merger is convenient and beneficial to all parties.

III. In the law relating to grants by the Crown, it is the rule that when a right belonging to the Crown by virtue of its prerogative (such as the right to wreck) is granted to a subject as an appendancy to land, then if the land comes into the hands of the Crown the right merges in the *jus coronæ*, and does not pass by a grant of the land, but must be created again. Rights vested in the Crown otherwise than *jure coronæ* (such as warrens, fairs, etc.) do not merge.

As to the merger of tithes, see that title.

Meritò beneficium legis amittit, qui legem ipsam subvertere intendit (2 *Inst.* 53). (He justly loses the benefit of law who purposes to overturn the law itself.) "Against those that attempt to subvert . . . the king's laws there lieth a writ in the nature of a commission '*Ad capiendum impugnatores juris Regis et ad ducendum eos ad Gaolam de Newgate*" . . . and this is *lex terræ* to take a man without answer or summons in this case" (2 *Inst.* 53). But Coke wrote before the days of *habeas corpus*, and the procedure indicated by him is no longer available.

Merit, Order of. This Order was instituted in 1902. Members bear no titles, but rank next after G.C.B.'s (see BATH) and are entitled to append the initials "O.M." to their names and to wear a badge. The badge distinguishes military from civil members by a difference in design and by the use of the words "*Civ.*" or "*Mil.*" respectively.

Meritorious. See CAUSE OF ACTION; CONSIDERATION.

Merits. A person is said to have a good cause of action or defence on the merits when his claim or defence is based on the real matters in question, and not on any technical ground. Thus before the Judicature Acts a defence based on the misjoinder or nonjoinder of parties by the plaintiff would not have been a defence on the merits. If a defendant inadvertently allows judgment to go by default, the Court will not, as a rule, set the judgment aside under Ord. 27, r. 15, and allow him to defend unless he makes an affidavit of merits, that is, an affidavit showing that he has a substantial ground of defence to the action. A like affidavit has to be made by a defendant seeking to resist an application for judgment under Ord. 14.

Merry-go-rounds. See WHIRLIGIGS.

Merton, Statute of. The statute 20 Hen. 3, cc. 1-11, of which cc. 2, 4 and 9 are still unrepealed. It is the earliest statute in the

statute-book. It was in connection with this statute that the barons, when the question of the legitimation of the *ante-nati* (q.v.) arose, made the famous declaration "*Nolumus leges Angliæ* [or *Anglie*, as they put it] *mutari.*"

Mesnalty is the tenure or seignory of a mesne lord. "If," says Littleton, "there be lord [paramount], mesne [lord], and tenant [paravail], and . . . if the lord paramount purchase the tenancie [of the tenant paravail] in fee, then . . . the seignorie of the mesnalty is extinct." (§ 231.)

Mesne signifies middle, intervening or intermediate. Thus in framing an assignment of a lease which has already passed through several hands since it was originally granted, it is usual to refer to all the assignments before the last as "mesne assignments." So if property is mortgaged first to A and then to B, and is subsequently mortgaged to A a second time, B is said to be a mesne incumbrancer, or to have a mesne incumbrance, because his mortgage stands between the two mortgages to A. See PRIORITY; TACKING.

When a person is wrongfully in possession of land, and the rightful owner brings an action to recover possession, he usually sets up in addition, either in the same or a separate action, a claim for "mesne profits"; that is, for the benefit which the defendant has derived from his wrongful occupation of the land between the time when he acquired wrongful possession and the time when the possession was taken from him. See JOINDER; also DOUBLE RENT; DOUBLE VALUE.

As to the meaning of "mesne lord," see LORD; MESNALTY; of "mesne process," see PROCESS; of "mesne tenure," see TENURE. In the old books "mesne" often denotes "mesne lord."

The writ of mesne was a writ which a tenant paravail (q.v.) had to compel his immediate lord (the mesne) to protect or acquit him against the lord paramount. (See FORJUDGER; ACQUITTAL.) It was abolished by the Real Property Limitation Act, 1833.

Messenger. In bankruptcy there was formerly, down to 1883, a sort of sheriff's officer, known as the messenger, whose duty it was to execute the decrees and processes of the Court. He and his staff were transferred by the Bankruptcy Act, 1883, to the Board of Trade, which does not now appear to employ any official designated a messenger.

Down to 1874 there was a messenger or pursuivant of the Great Seal, who, amongst other things, had to do with writs for the election of members of Parliament. His office was abolished as a separate office by the Great Seal (Offices) Act, 1874, s. 4, which provided that his duties as to writs for the election of members of Parliament should be transferred to such officer as the Lord Chancellor should select, and that the officer so selected might bear the title of Messenger of the Great Seal. Accordingly, there is now an officer known as the Clerk of the Chamber and Messenger of the Great Seal.

The Messengers of the Exchequer were four officers attached to that Court who acted as pursuivants to the Lord Treasurer.

In the seventeenth and eighteenth centuries the Stationers' Company had an officer, known as the Messenger of the Press, whose duty it was to search, at first for unlicensed and subsequently for seditious, printings.

During the time of the Tudors and Stuarts, the arrest of prisoners of state was generally effected by officers known as messengers.

Now the only "messengers" left are King's Messengers. They carry important Government despatches to and from the King and for Secretaries of State, more especially the Secretary of State for Foreign Affairs.

Messuage is a house. As a word of conveyance, "messuage" includes not only the buildings but also the curtilage, orchard and garden belonging thereto. A "capital messuage" is the chief mansion house of an estate. See MANSION.

Metage. The act of measuring. The Corporation of the City of London had under charter and by prescription been in receipt of a large income arising from their right of compulsory metage, at first of all merchandise, and finally only of grain, brought into the Port of London. The dues which they levied for measuring the grain were known as fillage and lastage. The Metage on Grain (Port of London) Act, 1872 (35 & 36 Vict. c. c.) abolished compulsory metage and "fillage and lastage," and provided that for thirty years from 31st October, 1872, a duty at the rate of three-sixteenths of a penny on each hundredweight of grain should be paid to the Corporation. The Act, which provided that the proceeds of the duty should be applied to the preservation of open spaces for public use, was amended by the City of London (Various Powers) Act, 1877 (40 Vict. c. vii.).

Metal. Unless the context so requires, this term does not include the precious metals.

As to old metals, see that title and MARINE STORE DEALER.

Mete. A form of "meat," in the sense of food generally. It occurs in several com-

pounds, such as metecorn (an allowance for food to servants or to customary tenants in return for their labour), metegavel (a rent paid in food, etc.). The word also meant to measure, and occurs in this sense in compound forms, such as metewand (a measuring-rod, like the modern draper's yard-stick), etc.

Metes and Bounds. In ordinary cases where a widow is entitled to dower of land, her share is ascertained and set apart to be held by her in severalty, and she is then, in the words of Littleton, said to hold it "by metes and bounds," that is, by measurement and boundaries. See ADMEASUREMENT.

Metheglin. An alcoholic fluid made by fermenting honey water and spices; mentioned in the statute 15 Car. 2, c. 9. See SWEETS.

Metric System. A system of weights and measures in which the unit is multiplied or divided by ten. The use of such a system is legalised by the Weights and Measures (Metric System) Act, 1897. The Order in Council (1898, No. 411) made in pursuance thereof sets out the equivalents in the metric system of our various imperial weights and measures. See also CARAT.

Metropolis. For the meaning of this expression see LONDON.

Metropolitan Board of Works. The name of a board appointed for the better local management of the metropolis, and constituted and authorised under the Metropolis Management Act, 1855, and many subsequent Acts. They had the care and management of all grounds and gardens dedicated to the use of the inhabitants in the metropolis; also, the superintendence of the drainage; also, the regulation of the street traffic, and generally of the buildings of the metropolis. The Board has ceased to exist and has been superseded by the London County Council. See LONDON.

Metropolitan Courts. These are the County Courts of the districts which, together with the City of London, form the London Bankruptcy District, as to which see BANKRUPTCY COURT.

Metropolitan Paving Act, 1817. The title generally, though without statutory authority, applied to the statute 57 Geo. 3, c. xxix., which is also known as Michael Angelo Taylor's Act.

Metropolitan Police District. This is the area under the charge of the Metropolitan Police. It includes the administrative county of London (the City being excluded), the whole of Middlesex, the county boroughs of Croydon and West Ham, and such places within a radius of fifteen miles of Charing Cross as the King by Order in Council has included. See the Metropolitan Police Act, 1829, ss. 4, 34, 35, the Metropolitan Police Act, 1839, s. 2; and (for a list if places included by Order in Council) Stat. R. & O. Rev. 1904, Vol. viii. "*Metropolitan and City Police District*," p. 1.

Metropolitan Police Magistrate. Under the Metropolitan Police Act, 1829, s. 1, the Metropolitan Police Courts Act, 1839, s. 3, the Metropolitan Police Courts Act, 1840, s. 2, and the Stipendary Magistrates Act, 1858, s. 14, the Crown may appoint not more than twenty-seven salaried magistrates, holding office at the pleasure of the Crown, to execute the duties of justices of the peace within the Metropolitan Police District, and to be justices of the peace for the counties of London, Middlesex, Surrey, Hertford, Essex, and Kent, from amongst barristers who have been in practice for the seven years preceding their appointment or who have been stipendiary magistrates (q.v.). The chief Metropolitan Police magistrate is *ex officio* a justice for Berks (Indictable Offences Act, 1848, s. 31); which enables him to attend Ascot Race Meeting and to deal with persons charged with indictable offences committed there.

Under the Metropolitan Police Courts Act, 1840, s. 2, the King in Council is empowered to divide the Metropolitan Police District into divisions, in each of which there is established a Court to which is assigned one of the magistrates, who, however, can still act anywhere within the limits of his commission. His commission is the same as that of a county justice: but he may not act at general or quarter sessions (Metropolitan Police Act, 1829, s. 1): and he can do all things for which two ordinary justices are required (Summary Jurisdiction Act, 1848, s. 33: Indictable Offences Act, 1848, s. 39). Beyond the limits of the jurisdiction of the Metropolitan Police Courts, he can act at licensing sessions as regards any licensing district wholly or partially within his jurisdiction (Licensing Act, 1872, s. 39).

Mice. See RATS AND MICE.

Michael Angelo Taylor's Act. A popular title of the statute 57 Geo. 3, c. xxix. It was introduced into the House of Commons by Mr. Michael Angelo Taylor, who, amongst other things, was admitted to Lincoln's Inn in 1770 at the age of twelve years, and was called to the Bar only four years afterwards.

Michaelmas. The 29th September, of which the fuller title is the Feast of the Archangel

Michael and All Angels. It is one of the customary quarter-days, and gives its name to the autumn sittings of the High Court, though they do not commence until 12th October, and to the Michaelmas term of the Inns, though it does not commence until 2nd November. See OLD MICHAELMAS DAY.

Micklemote; Micklegemote. The Great Council or national assembly of the Anglo-Saxon period. The names meant literally "the great meeting."

Middlesex. Since 1888, much of the ancient county of Middlesex has been part of the county of London. See LONDON.

The quarter sessions for the county of Middlesex—which are known as the Middlesex Sessions—are held at the Guildhall in the City of London, although provision was made by the Local Government Act, 1888, s. 42 (12), for the holding of them within the actual county of Middlesex, if that were considered desirable. Formerly (see ASSISTANT JUDGE, ETC.) paid judges presided at these sessions, but now, like the quarter sessions of other counties, they are presided over by an unpaid chairman, and an unpaid deputy chairman. They are quite distinct from the quarter sessions for the county of London—known as the County of London Sessions—which have jurisdiction over the whole administrative county of London, and are presided over by a paid chairman and a paid deputy chairman, both appointed by the Crown (see the Local Government Act, 1888, s. 42). The County of London Sessions were held until 1921 at the Sessions House, Clerkenwell, from which in that year they were removed to a new courthouse at Stoke Newington. See LONDON SESSIONS; GUILDHALL SITTINGS.

There is, since 1888, a Sheriff of Middlesex, selected by the Crown (Local Government Act, 1888, ss. 46 (6), 113). For the preceding seven hundred years the duties of sheriff had been performed in Middlesex by the Sheriffs of the City of London.

The Middlesex Land Registry is a registry of assurances relating to land situate in the county of Middlesex. (See LAND REGISTRIES.) It is regulated by the Middlesex Registry Act, 1708, which makes every such deed fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless it has been registered before the purchaser's or mortgagee's deed; but that statute does not apply (see s. 18) to copyholds, leases at a rackrent, or leases not exceeding twenty-one years, or to any instrument made after the passing, on 30th July, 1900, of the Land Charges Act, 1900, which is capable of registration under the Act of 1900 or under the Land Charges Registration and Searches Act, 1888 (Act of 1900, s. 4). A will of lands in the county also requires registration within six months of the testator's death, or before the registration of an assurance to a purchaser or mortgagee from the testator's heir-at-law (Vendor and Purchaser Act, 1874, s. 8). The Middlesex Land Registry was transferred in 1891 (Land Registry (Middlesex Deeds) Act, 1891, s. 1), to the Land Registry in London, established under the Land Transfer Act, 1875.

As to the ancient BILL OF MIDDLESEX, see that title.

Middle Temple. See INNS OF COURT.

Midsummer Day. The 24th June. It is the feast (q.v.) of St. John the Baptist, and is one of the customary quarter-days. See OLD MIDSUMMER DAY.

Midwives. Down to 1st April, 1905, anyone could call herself a midwife and attend women in childbirth, no matter how ignorant she might be. In England now a woman who habitually and for gain attends women in childbirth commits an offence unless she is certified as a midwife under the Midwives Act, 1902 (2 Edw. 7, c. 17) as amended by the Midwives Act, 1918, s. 10 (Act of 1902, s. 1 (2)). Unless she is certified she commits an offence if she calls herself a midwife or holds herself out as certified (*ib.* s. 1 (1)). There is a Central Midwives Board which issues certificates, publishes annually a roll of certified midwives and can remove from the roll any midwife guilty of misconduct (*ib.* s. 3). The misconduct need not necessarily be professional misconduct. The two Acts now regulate the whole subject, and the rules made pursuant to them form a complete code. For the rules see S. R. and O. 1916, I., p. 540 and S. R. and O. 1919, I, p. 1,099.

The Ministry of Health is now the department which is concerned with the administration of the Acts (Ministry of Health Act, 1919, s. 3 (1) (e)).

Mile. The statute 35 Eliz. c. 6, s. 8, provided as follows:—"A Myle to conteyne eight furlongs, and everie furlong to conteyne fortie luggs or poles, and overie lugg or pole to conteyne sixteen foote and half." This makes the mile, the furlong, and the pole or perch, precisely what they are declared to be by s. 11 of the Weights and Measures Act, 1878. The mile everywhere has always contained 320 "rods, poles, perches or luggs" (which were all synonyms), but varied in

different parts of the country as the length of the perch (q.v.) varied locally.

Miles; Militia; Militare. These words meant respectively a knight, knighthood, and to be knighted.

Milestones. Railway companies are required by the Railways Clauses Act, 1845, to set up the posts marking the miles, quarter-miles, and half-miles which are to be seen along railways. No corresponding obligation is imposed on highway authorities, who however are empowered by the Highway Rate Assessment and Expenditure Act, 1882, s. 6, to expend money on maintaining, replacing or setting up milestones along any highway. The trustees of turnpike roads had under various repealed statutes—see, for instance, the 3 Geo. 4, c. 26, s. 119—been required to erect milestones at distances of one mile. Pulling down or damaging a milestone is punishable summarily under the Highway Act, 1835, s. 2.

Military. The various tenures by knight-service, grand-serjeanty, cornage, etc., are frequently called military tenures, from the nature of the services which they involved. See SERVICE; TENURE.

Military Law. This is the law under which courts martial (q.v.) sit, and to which persons in the military service of the Crown are subject. (See MARTIAL LAW; ARMY.) It does not include the law which applies to the naval service of the Crown: and there is no corresponding expression such as "naval law." See NAVY.

Military Testament. A nuncupative will made by a soldier on active service. See WILLS.

Militia. The force which was raised after the Restoration of 1660 as a substitute for those which had been raised under the commissions of array (q.v.) and lieutenancy (q.v.). The name had been in use during the Civil War, but the force was for the first time regularly raised under the authority of the statute 14 Car. 2, c. 3, which empowered the lords lieutenant (q.v.) of counties to raise and train troops within their counties for service as the King might direct. In 1757 the statute 30 Geo. 2, c. 25, provided that the men required for the militia should be selected by a system of balloting. This system of balloting had been in abeyance from 1815 until 1921, except as regards two years in the reign of William IV.: but for this, until the enactment of the statute 10 Geo. 4, c. 10, there would appear to have been no statutory sanction. As a substitute for the balloting system, voluntary enlistment was introduced: but this again was not put upon a regular footing until the enactment of the statute 15 & 16 Vict. c. 50. The succession of Acts for the suspension of the ballot ended with the enactment of the Militia (Ballot Suspension) Act, 1865, which, though only a temporary Act, was kept in force by the annual Expiring Laws Continuance Acts. This Act of 1865 provided, however, by s. 2, that the Militia Ballot, as amended by Acts subsequent to the Act of 1757, might be revived by Order in Council. The Militia Act, 1882, s. 12 (as impliedly amended by s. 2 of the Reserve Forces and Militia Act, 1898), made the Militia available only for service in the United Kingdom, except as regards those members of the force who might voluntarily offer to serve elsewhere. The Militia in the old sense has now disappeared. The Territorial Army and Militia Act, 1921, s. 2, enacts that the portion of the Army Reserve previously called the "Special Reserve" shall be called the Militia. The modern Militia is therefore the Special Reserve which (Reserve Forces Act, 1882, s 12) may be called out for service anywhere in case of imminent national danger or of great emergency: and the Militia now consists of men who, without previous service in the regular forces, enlisted into the Special Reserve or (Territorial Army, Militia Act, 1921, s. 5 (2)) since 1st October, 1921, have enlisted into the Militia (Territorial and Reserve Forces Act, 1907, s. 30 (1)). Any member of the Militia may agree in writing to be called out at times other than those of danger or emergency: see Reserve Forces Act, 1882, s. 32 (1).

Milk. See DAIRIES.

Milk-blended Butter. ". . . Any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream" . . . (Butter and Margarine Act, 1907, s. 1 (1) (*b*)) Compare BUTTER.

Minatur innocentibus, qui parcit nocentibus (4 *Co.* 45). (He threatens the innocent who spares the guilty.) That is to say, the leaving of law-breakers unpunished is a menace to law-abiding persons. Compare IMPUNITAS, ETC.

Mineral Rights Duty. This is an annual duty at the rate of 1s. in the £1 on the rental value (that is to say, the actual or estimated rent) of mining royalties; it is payable under the Finance (1909-10) Act, 1910, ss. 20-24. See LAND VALUES DUTIES; RENTAL VALUE.

Minerals; Mines. In the most general sense of the term, minerals are those parts of the earth which are capable of being got from underneath the surface for the purpose of

profit. The term therefore includes coal, metal ores of all kinds, stone, slate, and coprolites, but not the common clay, sand, or gravel found in the upper soil. A mine is a work for the excavation of minerals by means of pits, shafts, levels, tunnels, etc., as opposed to a quarry, where the whole excavation is open. While unsevered, minerals form part of the land, and as such are real estate. When severed, they become personal chattels. Royal mines are mines of gold or silver, and belong to the Crown, in whosesoever land they may be found. In other cases, mines and minerals belong *primâ facie* to the owner of the surface of the land, though they may be, and frequently are, held by different persons. It follows from the nature of copyhold tenure that the minerals under copyhold land belong to the lord, though he cannot work them without the tenant's consent, except by a local custom. (See COPYHOLD.) In many places, customs or prescriptions exist, by virtue of which persons are entitled to work mines in land, the freehold of which is vested in another person. See GALE; STANNARIES; TIN-BOUNDING.

A trustee having a power of sale may, with the sanction of the High Court, sell the lands without the minerals, or the minerals without the lands (Trustee Act, 1893, s. 44).

As to the rights of adjoining owners in respect of minerals, see BARRIER; BOUNDARIES; BOUNDS; EASEMENT; SUPPORT.

By modern statutes, numerous obligations have been imposed on mine owners for the protection of the public and of persons employed in mines. The principal Acts now in force are, as regards coal mines, those mentioned under COAL MINES, and, as regards mines generally, the Metalliferous Mines Regulation Acts, 1872 and 1875 (see FENCE), the Quarries Act, 1894, the Mines (Prohibition of Child Labour Underground) Act, 1900, and the Mines Accidents (Rescue and Aid) Act, 1910. The right to work minerals under railways, canals, waterworks and highways is restricted by the Acts relating to those matters.

Children may not be employed in any mine or quarry to which the Metalliferous Mines Acts, 1872-1875, apply (Education Act, 1918, s. 14).

See COAL MINES.

Mineral Waters. See TABLE WATERS.

Minimè mutanda sunt quæ certam habent interpretationem (*Co. Litt.* 229, 365). (Things which have a settled interpretation are to be altered as little as possible.) Compare A COMMUNI, ETC; PERICULOSUM EST, ETC.; MAGISTER RERUM, ETC.

Minimum Wage. The system of establishing by statute a wage which is to be the lowest paid, was introduced in modern times by the Trade Boards Act, 1909, c. 22, which applied only (1) to certain trades (mentioned in the schedule to the Act), the men and women employed in which were understood to be unable to secure adequate wages by negotiation with their employers; and (2) such other trades as might be brought within the Act by Order in Council. In 1912 a minimum wage was established for coal-miners (see COAL MINES). During the war of 1914-1918 the payment of prescribed wages was made obligatory in a number of industries connected with the supply of munitions of war by Acts of temporary operation. The Corn Production Act, 1917, Pt. II., established for agricultural workers a minimum wage, which was to be fixed by the Agricultural Wages Board constituted under s. 5 of the Act. The Act of 1917 was to have expired on 31st December, 1922; but the Agriculture Act, 1920 (10 & 11 Geo. 5, c. 76), s. 1, provided that it should remain in force until Parliament otherwise determines. Within eight months Parliament did in fact "otherwise determine": for the Corn Production Acts (Repeal) Act, 1921, repealed the Acts of 1917 and 1920 as from 1st October, 1921, with saving clauses which did not preserve the minimum wage. But the Act of 1921, s. 5, provides machinery by which standard rates of wages can be fixed, and enacts that these rates shall be paid to agricultural workers unless the contract for service specifies a lower rate, and unless such lower rate be approved by the body which fixes the standard rate or by a Court in which proceedings for the recovery of wages at the standard rate are being taken.

See TRADE BOARDS.

Minister. *Quoad* the Church of England this includes anyone in priest's-orders having a cure of souls. Compare PRIEST.

Ministerial is opposed to judicial or discretionary. Thus, a ministerial office or duty is one which merely involves the following of instructions; in other words, one which can be performed without the exercise of more than ordinary skill, prudence, or discretion, *e.g.*, the payment or receipt of money, the execution of a deed, or the like; while a judicial or discretionary office or duty involves the exercise of judgment or discretion (q.v.). As to the ministerial office of a coroner, see CORONER. The phrase is often used in speak-

ing of a delegation of authority; the general rule being that an executor, trustee, agent, etc., can delegate his authority so far as to empower another person to do a merely ministerial act for him, but not to empower another person to exercise a discretion vested in him (the executor, trustee, agent, etc.). Thus, an executor cannot (it is conceived) authorise another person to dispose of his testator's estate, or compromise claims by creditors; but if he has entered into an agreement for the sale of the property, or for the compromise of a claim, he may appoint another person to carry out the agreement by receiving or paying the money. See AGENT.

As to ministerial trusts, see TRUST.

Ministry. This means not merely the members of the Cabinet but also all holders of offices who go in and out with the Government. Thus the Solicitor-General is always a member of the Ministry, but is never in the Cabinet.

Minor. In law a minor and an infant are one and the same thing. See GUARDIAN; INFANT.

Minor ante tempus agere non potest in casu proprietatis, nec etiam convenire; differetur usque ætatem; sed non cadit breve (2 *Inst.* 291). (A minor before majority cannot act in a case of property, not even to agree; it should be deferred until majority; but a writ does not fail.) This is a passage from Bracton which is quoted by Coke with special reference to the Statute of Gloucester (6 Edw. 1), c. 2.

Minor Canon. This term includes every vicar, vicar choral, priest vicar, and senior vicar being a member of the choir in any cathedral or collegiate church (Ecclesiastical Commissioners Act, 1840, s. 93). The term minor canon is used only at St. Paul's and Hereford Cathedrals.

Minories, The. See PRIVILEGED PLACES.

Minor jurare non potest (*Co. Litt.* 172). (A minor cannot swear.) This is a quotation from Bracton, lib. 5, fo. 340. It was never literally true. Thus in Bracton's time the oath of allegiance could be required of one over twelve; but even after the time of Coke an infant could not upon his oath make his law in an action of debt.

Minor minorem custodire non debet; alios enim præsumitur male regere qui seipsum regere nescit (*Co. Litt.* 88). (A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself.) This is merely a quotation from Fleta, lib. 1, c. 10, with regard to guardianship under the feudal system.

Minor, qui infra ætatem 12 annorum fuerit, utlagari non potest, nec extra legem poni, quia ante talem ætatem non est sub lege aliqua (*Co. Litt.* 128). (A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because, before such age, he is not under any law.) This is a quotation from Bracton, lib. 3, fo. 125.

Mint. This meant anciently not merely the Mint at which coins of the realm are made, but also a pretended sanctuary (q.v.) in Southwark, which was finally suppressed by the statute 9 Geo. 1, c. 28. It was also known as Suffolk Place. See PRIVILEGED PLACES.

The Mint, or place in which money is manufactured, existed in the Tower of London so far back as Anglo-Saxon times. From early times there were also provincial mints at various towns, and down to the fall of Cardinal Wolsey grants of coining rights were frequently made to ecclesiastical persons. The coining at the principal Mint in the Tower was done by contractors from the thirteenth century down to 1851. In 1325 the officers of the Mint were incorporated by royal charter, which placed the management in the hands of a master (the contractor for the time being) and various other officers. The Mint remained in the Tower until 1810, when it was removed to its present site on Tower Hill. In 1851 contractors ceased to be employed, and the Mint became in all respects a Government Department, managed by public officials. It is now regulated by the Coinage Act, 1870. See MASTER OF THE MINT.

By virtue of the royal prerogative, branch mints were established at Sydney in 1853 and at Melbourne in 1869 under Orders in Council. Those branch mints, as well as others at Perth (Western Australia), Ottawa, Bombay, and Calcutta, are now carried on under Orders in Council made pursuant to the Coinage Act, 1870, s. 11 (8), and coins minted at them are deemed to have been minted at the Royal Mint upon Tower Hill (*ib.*). See PYX.

Mint-master. See MASTER OF THE MINT.

Minutes are notes or records of a transaction. Thus, the record of the proceedings at a meeting of directors or shareholders of a company is called the minutes. Minutes must be made, in the proper book, of all general meetings and of all meetings of directors and managers of a company (Companies (Consolidation) Act, 1908, s. 71).

When the parties to an action, petition, or other proceeding in the Chancery Division are agreed as to the order or judgment which should be made on an application to the Court,

they usually (especially if the matter is complicated) draw up beforehand minutes of the order or judgment (formerly called "minutes of order"), containing in outline all the provisions which are thought necessary. The minutes are afterwards put into the form of an order by the registrar. (See PASS; SETTLE.)

Formerly, in Chancery suits, when an order or decree had been made, the registrar did not draw it up in full in the first instance, but framed an outline giving the substance of the order, copies of which were delivered to the parties, to be settled by them in his presence, if necessary. For many years the practice has been to draw up the order or decree complete in the first instance, and copies of the draft are delivered to the parties. In practice these copies are still called "minutes"; and when any dispute arises on the form of the order which has to be referred to the Court, the cause is put into the paper "to be spoken to on the minutes." See ENTER; PASS; SETTLE.

Mirror of Justices. A book supposed to have been written in the thirteenth century which was first published in 1642. It is entirely without value as an authority. The best edition is that of Mr. Whitaker, published, with an introduction by Mr. Maitland, by the Selden Society in 1893. As to the authorship of the book, see 13 *L. Q. R.* 85.

Misadventure, Homicide by. See INFORTUNIAM, HOMICIDE PER.

Misappropriation is a term sometimes applied to the misdemeanour which is committed by a banker, factor, agent, trustee, etc., who fraudulently deals with money, goods, securities, etc. entrusted to him, or by a director or public officer of a corporation or company who fraudulently misapplies any of its property. (See FRAUD; PUBLIC OFFICER). The term is not, however, used in the law at all except in the title of the Misappropriation by Servants Act, 1863, which provides that a servant taking without authority his master's corn, etc., for the purpose of giving it to a horse, etc., other than his master's shall be guilty, not of felony, but of an offence punishable summarily. Such taking had previously been felony, like other larcenies.

Miscarriage. See ABORTION.

Miscontinuance. Down to 1833, when the entry of continuances (q.v.) was abolished, there was said to be a discontinuance (q.v.) when no continuance was entered: when the continuance was entered up, but irregularly, there was said to be a miscontinuance. There was, therefore, a distinction between the two terms, although they are sometimes erroneously said to be of identical meaning.

Misdemeanour is any crime or indictable offence not amounting to felony: such as perjury, battery, libel, conspiracy, and public nuisances. At common law, misdemeanours are generally punishable by fine and imprisonment, formerly without, but now with or without, hard labour (q.v.) In many cases special punishments have been attached to misdemeanours by statute.

Misdescription. In certain cases, when a contract contains a material misdescription, that is, when the description of the subject-matter of the contract is incorrect or misleading in a material and substantial point, the contract is voidable at the option of the party misled, independently of fraud, concealment, or misrepresentation (q.v.). Thus, in a contract of fire insurance, if the building is so described by the assured as to make the risk appear less than it really is, the insurer is entitled to avoid the contract. So, in a sale of land, a misdescription materially affecting the value, title, or character of the property sold will make the contract voidable at the purchaser's option. The test of materiality seems to be whether, if the subject-matter had been correctly described, the party misled would have entered into the contract.

A wrong description does not affect the validity of the transaction if there is no mistake as to the identity of the person or thing intended to be described, as where a person is called by a wrong name. See the maxim *falsa demonstratio non nocet*.

As to misdescription of quite another kind, see FABRICS.

Mise, in the obsolete writ of right, was the same thing as the issue in an ordinary action, and was so called because the tenant "put" himself upon the grant assise (q.v.), that is, chose it as the mode of trial.

The word was also applied to certain taxes payable in Wales and in the adjoining areas See, for instance, the statutes 27 Hen. 8, c. 26, s. 23, and 2 & 3 Edw. 6, c. 36, s. 52.

It was also used in the old personal action where the judgment was *pro misis et custagiis* (for charges and costs) such and such a sum.

Mise-book. A book formerly kept in the County Palatine of Chester for entries as regards the payment of mise (q.v.).

Misera est servitus, ubi jus est vagum aut incertum (4 *Inst.* 246). (Obedience to the law is a hardship, where the law is vague and uncertain.) This maxim is quoted by Coke as a comment on the jurisdiction exercised by the

Council of the North—until the common law Courts intervened—under instructions which were kept secret so that the king's subjects were unaware of their position with regard to the Council. It is cited by Lord Kenyon, C.J. (8 *T. R.* 504) as showing the inadvisability of capricious departure from well-settled law.

Misericordia. See AMERCIAMENT.

Misevenire. Used in *Leg. Canut.* as meaning to fail in one's defence or in purgation.

Misfeasance; Misfeasor. Misfeasance is the improper performance of a lawful act: as where a person is guilty of negligence in performing a contract. Misfeasor is a person who does a misfeasance. In the old books misfeasance was used especially to signify trespasses and other offences in parks, forests, etc. At the present day it is chiefly used to signify negligence.

See MALFEASANCE; NONFEASANCE; TORT.

Mishering. See ABISHERING.

Misjoinder is where persons are wrongly joined as plaintiffs or defendants in an action: in other words, where persons are made parties who ought not to be. The rule before the Judicature Acts was that in an action of contract a misjoinder of plaintiffs led only to increased costs, while a misjoinder of defendants was fatal; and that in an action of tort a misjoinder of plaintiffs or defendants led only to increased costs. No action can now be defeated by a misjoinder (Ord. 16, r. 11). See JOINDER.

Misnomer. A mis-naming. Down to 1834, a plea in abatement (q.v.) lay for a misnomer in civil proceedings, and down to the enactment of the Criminal Law Act, 1826 (7 Geo. 4, c. 64) a misnomer in an indictment was fatal. Now in either case an amendment (q.v.) can be made.

See IDEM SONANS.

Misprision, "in its larger sense, is used to signify every considerable misdemeanour which has not a certain name given to it by the law; and it is said that a misprision is contained in every treason or felony whatsoever, and that one who is guilty of felony or treason may be proceeded against for a misprision only." The term is, however, rarely if ever used in this sense, it being now practically confined to the two phrases, misprision of treason and misprision of felony.

Misprision of treason is where a person who knows that some other person has committed high treason does not within a reasonable time give information thereof to a judge of assize or justice of the peace. At common law the punishment is imprisonment for life and forfeiture of the offender's goods, etc.; but prosecutions for the offence are now unknown.

Misprision of felony is where a person who knows that some other person has committed felony conceals or procures the concealment thereof. In ordinary cases the offence is a common law misdemeanour; if the offender is a sheriff or coroner, or the bailiff of either officer, a special punishment is inflicted. But prosecutions for this offence also are obsolete.

Misrepresentation is where one of the parties to an intended contract conveys to the other a false impression as to some matter relating to the contract, whether by an express statement (active) or by silence (passive).

False or fraudulent misrepresentation is a representation contrary to the fact, made by a person with knowledge of its falsehood, and being the cause of the other party's entering into the contract. See DOLUS DANS LOCUM CONTRACTUI; FRAUD.

Negligent misrepresentation is a false representation made by a person who has no reasonable grounds for believing it to be true, though he does not know that it is untrue, or even believes it to be true

Innocent misrepresentation is where the person making the representation had reasonable grounds for believing it to be true.

When a person has been induced to enter into a contract by fraudulent or negligent misrepresentation, he may in general either (i) affirm the contract and insist on the misrepresentation being made good, if that is possible, so as to be put in the same position as if it had been originally true, or (ii) rescind the contract (see RESCISSION), or (iii) bring an action for damages, or (iv) rely upon the misrepresentation as a defence to an action on the contract. An innocent misrepresentation has no effect on the contract unless it produces mistake excluding true consent (*error in substantia*, as to which see MISTAKE); or unless it amounts to a warranty or condition, or unless the contract is one in which good faith is especially required, such as contracts of insurance and family settlements.

Mistake. Although mistake and ignorance are strictly speaking not identical, the one being positive and the other negative, they are commonly used as convertible terms in law, their effects being identical. Mistake then may be defined as a misapprehension as to the existence of a thing, arising either from ignorance in the strict sense, that is, absence of knowledge on the subject, or from mistake in the strict sense, that is, a false belief on the point. Where, however, mistake produces a

legal effect, not of itself, but because it coincides with some other fact, the effect is not attributed to the mistake, but to the whole transaction. Thus, mistake is essential to the idea of fraud, because no one can be defrauded unless he is misled, and to many cases where negligence or *bona fides* is of importance; but no one would treat these subjects as instances of mistake. In practice, therefore, the term mistake is limited to cases where the effect produced is attributed to it alone.

Mistake is either of law or of fact.

I. Mistake of law (*error* or *ignorantia juris*) is a mistake as to a general rule of law: as where a testator thinks that to disinherit his heir it is necessary to give him a nominal bequest, or where a person does not know that a contract not to be performed within a year must be in writing. The general rule is that such a mistake does not affect the transaction, whether in civil or in criminal law. Thus, in the first of the above cases the executor could not refuse to pay the bequest, and, in the second, the contract would be void for want of the formality of writing.

II. Mistake of fact (*error* or *ignorantia facti*) is either as to the existence of a fact or as to the existence of a right depending on questions of mixed law and fact. Thus, where A., believing that under a deed of grant he had merely a right of rabbit warren over certain land, entered into an agreement for an exchange of properties with a neighbouring proprietor, who was also under the belief that A. was only entitled to the right of warren, but it was afterwards discovered that under the deed of grant A. was entitled to the land itself: it was held that the mistake was one of fact, and that, therefore (under the rule stated *infra*), A. was entitled to have the agreement rescinded, although it had been partially carried out. Questions of foreign law being questions of fact, a mistake as to foreign law is a mistake of fact. See FACT.

Mistake of fact is of two kinds, fundamental and collateral.

A mistake is fundamental when it prevents an act from producing its legal effect, because it excludes the necessary intention. Such a mistake may be either unilateral or bilateral. Instances of unilateral mistake excluding intention occur both in civil and criminal law. Thus, if A. signs a document by mistake, thinking it to be another document, his signature is ineffectual, because he did not intend to sign it. So if A. takes away a thing belonging to B., believing it to be his own, he does not commit a theft, because the necessary criminal intention is absent. Bilateral mistake excluding intention occurs only in civil law. Thus, if A. and B. enter into a contract of sale for an estate called Dale, there being in fact two estates called Dale, A. meaning one and B. the other, the consent or common intention necessary to constitute a contract is absent, and there, therefore, is no contract (*error in corpore*).

Collateral mistake is where the necessary intention is present, but it is induced or accompanied by a mistake. The mistake may be either unilateral or mutual. As a general rule, unilateral mistake has no legal effect at all. Thus if A. purchases property from B. under a mistaken belief as to its qualities, he cannot set aside the sale or recover damages from B. on the ground of his mistake, unless there was misrepresentation or a guarantee on the part of B. The principal exception to the rule is that if money is paid under a mistake of fact it may be recovered back. Mutual mistake is where the parties have a common intention, but it is induced by a common or mutual mistake. The most important instance of this kind is where there is a common mistake as to the substance of the thing (*error in substantia*). Thus if A. and B. enter into a contract of sale for a vessel, each believing it to be of gold, while it is in fact of brass, either may rescind the contract. Again, if a mistake occurs in expressing the terms of an agreement, it will, as a general rule, be corrected, either when proceedings are taken to enforce it or by substantive proceedings taken for the purpose. (See RECTIFICATION). The most obvious example is that of clerical errors made in reducing a contract to writing.

Mistress of the Robes. A lady of high rank who is, theoretically, the chief personal attendant of the Queen, whether the Queen be a queen consort or a queen regnant, but whose duties are purely formal. Her attendance is required only on rare occasions of State. During the first years of the reign of Queen Victoria it became the rule that the Mistress of the Robes went in and out with the Ministry of the day. (See BEDCHAMBER.) The corresponding official as regards the King is the Groom of the Stole. His office would appear to be at present in abeyance. There is no rule that the holder goes in and out with the Ministry.

Mitigation. Where a defendant or prisoner whose responsibility or guilt is not in dispute proves facts tending to reduce the damages or punishment to be awarded against him, he is said to show facts in mitigation of damages,

or of sentence, as the case may be. Thus the defendant in an action of seduction may prove the bad character of the woman in mitigation of damages.

Mitre Court. See PRIVILEGED PLACES.

Mitter le droit; Mitter l'estate. See RELEASE.

Mittimus (="we send") was a writ used in sending a record or its tenor from one Court to another. Thus where *nul tiel record* was pleaded in one Court to the record of another Court of equal or superior jurisdiction, the tenor of the record was brought into Chancery by a *certiorari* (q.v.), and thence sent by *mittimus* into the Court where the action was. The necessity for the writ ceased in certain cases by force of the Crown Debts Act, 1801, ss. 5, 6; in others, by force of the statute 5 Geo. 4, c. 3; and in all the remaining cases by force of s. 76 of the Judicature Act, 1873. The effect of these enactments was to make an exemplification (q.v.) available in every case in which a *mittimus* had previously been required. See TESTE.

Mixed. "Mixed personalty" is the same as "impure personalty." (See PERSONALTY; CHARITY; ABATEMENT OF LEGACIES). As to what is meant by a BLENDED FUND, see that title; as to mixed questions of law and fact, see FACT; and as to mixed actions, see ACTIONS.

Mixed Arbitral Tribunal. A temporary tribunal, consisting of three members, which was established under Part VI. of the Treaty of Peace Order, 1919, made 19th August, 1919 (1919—No. 1517), pursuant to the Treaty of Peace Act, 1919: that Act relates to the Treaty of Versailles. The tribunal sits at Winchester House, London, to deal, under the economic clauses of the Treaty, with questions of international indebtedness.

Mobilia sequuntur personam. (Moveables follow the person.) Thus the law of a man's domicile governs the descent of his personal property and his testamentary dispositions thereof.

Mock Auction. See AUCTION.

Moderata misericordia, De. See AMERCIAMENT.

Modius terræ vel agri. This appears to have meant ten thousand square feet of land in pre-Conquest charters.

Modo et forma. In the ancient system of pleading it was the rule to deny that the thing alleged in the pleading of the other side had been done *modo et forma* (in the manner and form) alleged. This put the opposite party upon strict proof of every averment. Exceptions to the rule were the replications *de injuria* (q.v.) and *non est factum* (q.v.), in neither of which was the expression *modo et forma* used.

Modus, or **Modus decimandi,** was where there existed by custom a particular manner of tithing, that is, of paying tithes, different from the general rule. This was sometimes a pecuniary compensation, such as twopence an acre for the tithe of land; sometimes it was a compensation in work and labour, as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him, or the like. Moduses are within the Tithe Commutation Acts, and have been commuted in all cases. See TITHES; DE NON DECIMANDO; COMPOSITION; RANK.

Modus calumpniandi essoniarum. (The Manner of Challenging Essoins.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. I., p 217), amongst *Statutes of Uncertain Date*, and in the *Statutes at Large* as 12 Edw. 2, st. 2.

Modus et conventio vincunt legem (2 *Rep.* 73; *Co. Litt.* 19). (Custom and agreement overrule law.) An agreement may be made, if the parties to a contract so desire, which will overrule the law, but this does not apply to cases in which "contracting out" is prohibited by statute, or to cases in which their agreement would derogate from the rights of the public or is against public policy. See PACTA, ETC.; PERPETUA, ETC.; PRIVATORUM, ETC.

Modus faciendi homagium et fidelitatem. (The Manner of doing Homage and Fealty.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. I., p. 227), s. v. *Statutes of Uncertain Date*: printed in the *Statutes at Large* as 17 Edw. 2, st. 2.

Modus legem dat donationi (*Co. Litt.* 19; *Plow. Com.* 251). (Agreement gives law to the gift.) That is to say, the agreement for the transfer of land settles the conditions upon which the land is to be held. But this rule, which dates from the time of Fleta, now has limitations: see MODUS ET CONVENTIO, ETC.

Modus levandi fines. (The Manner of Levying of Fines.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. I., p. 213), s. v. *Statutes of Uncertain Date*, and in the *Statutes at Large* as 18 Edw. 1, st. 4. See CONGÉ D'ACCORDER.

Moiety is used in the old books in its proper sense of "half." "If," says Littleton, "a joynt estate be made of land to a husband and wife, and to a third person, in this case the husband and wife have in law in their

right but the moity, and the third person shall have as much as the husband and wife, viz. the other moity. And the cause is, for that the husband and wife are but one person in law," and the rule laid down by Littleton still holds good, the Married Women's Property Acts notwithstanding. The word is, however, frequently used to signify any fractional part —such as a third, fourth, etc.

Molestation. Molesting a person by following him in a persistent or disorderly manner, or by hiding his property, or by besetting his place of work or residence, with the view of compelling him to do, or abstain from doing, an act, is forbidden by s. 7 of the Conspiracy and Protection of Property Act, 1875, repealing the statute 34 & 35 Vict. c. 32. The term "molest" was used in the earlier Act, but is omitted from that of 1875. (See COMBINATION; INTIMIDATION; TRADE UNIONS).

In separation deeds between husband and wife there are generally mutual covenants against molestation. In such a case molestation implies not merely annoyance but an intention to annoy; and proceedings taken *bona fide* for the purpose of obtaining a divorce are not molestation.

Molitura. The toll paid to a lord by those grinding at his mill. *Molitura libera* meant freedom from the toll: the privilege of free grinding was generally possessed only by members of the lord's family. Compare FARINAGIUM.

Moll Flanders' Act. The popular title of the Disorderly Houses Act, 1751.

Molliter manus imposuit was the compendious name for the defence set up to an action for battery, where the defendant alleges that the battery complained of was lawful, and that "he laid hands on the plaintiff gently"; that is, used no more force than was necessary: as where a churchwarden turns a man out of church to prevent him from disturbing the congregation.

Molman. The same as gavelman (q.v.).

Molmutian Laws. An apocryphal code of laws attributed to a mythical Dunwallo Molmutius, the so-called sixteenth King of the Britons, alleged to have flourished about 400 B.C. No one knows who concocted them: Gildas, a British historian of the sixth century, translated them into Latin. See Usher, *Primord.* 123.

Money. See EARMARK; GOODS.

Money-bill. "A money bill means a bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition, for the payment of debt or other financial purposes, of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. . . ." (Parliament Act, 1911, s. 1 (2)). Taxation, public moneys, and loans by local authorities for local purposes are not within the definition (*ib.*). This is the first and only statutory definition of the expression "money-bill," although the expression had been well understood for centuries much in the sense of the definition. For hundreds of years it had been settled that money-bills could originate only in the House of Commons: in the seventeenth century the Commons claimed that the Lords could reject but not alter a money-bill, and this claim came in course of time to be admitted by the Lords: then the Commons claimed that the Lords could not reject such a bill: finally, when the Finance Bill of 1909 was rejected by the Lords, the Parliament Act, 1911, was passed by the Commons and was forced through the Lords. The effect of that Act is that any bill certified by the Speaker to be a money-bill within the meaning of the definition must be presented for the Royal Assent at the end of the session in which it passes the Commons, whether it is or is not passed by the Lords.

Money Counts. See COUNT; ASSUMPSIT.

Money had and received; Money paid. See CONTRACT; QUASI-CONTRACT.

Moneylenders. For the purposes of the Moneylenders Acts, 1900 and 1911, a moneylender means any "person whose business is that of money-lending or who advertises or announces himself or holds himself out in any way as carrying on that business; but does not include" pawnbrokers, friendly societies, bodies authorised by law to lend money, bankers, or bodies exempted by the Board of Trade (Moneylenders Act, 1900, s. 6).

The Act of 1900 provides that every moneylender must be registered and carry on business in one name only and only at his registered address or addresses; that he cannot send circulars to infants (q.v.); and that the Courts may re-open transactions between him and his clients. The Act of 1911 protects *bona fide* holders without notice of securities taken by moneylenders: see also BANK.

Money Lent. (See ASSUMPSIT.) The expression is of course still used in pleadings, as where a plaintiff claims "for money lent by the plaintiff to the defendant."

Money lent for gaming (q.v.) or for an illegal or immoral consideration (q.v.) cannot be recovered at law.

Money Paid. See ASSUMPSIT; GAMING.

Money Received. See ASSUMPSIT.

Monition. In Admiralty practice, a monition was a formal order of the Court commanding something to be done by the person to whom it was directed, and who was called the person monished. Thus, when money was decreed to be paid, a monition might be obtained commanding its payment. A monition was granted either on motion or on application in chambers, and, if not obeyed, might be enforced by attachment (q.v.). A monition also meant the process, analogous to a writ of summons, by which a cause for the condemnation of a ship as prize was formerly commenced. Monitions in either of these senses are now unknown: in admiralty, the judge has the same powers of injunction, etc., as in other divisions: and every cause in prize is commenced by writ of summons.

In ecclesiastical appeals to the Privy Council (and formerly also in admiralty appeals), as soon as the petition of appeal is lodged, a "monition for process" issues, calling upon the judge and officers of the Court below to transmit the proceedings in the cause to the registry of the Court of Appeal (Rules of 11th December, 1865, r. 4; S. R. & O. Rev. 1904, VI., Privy Council, p. 98). See PROCESS.

Monitions in divorce practice are now disused, orders having taken their place.

In ecclesiastical procedure, a monition is an order monishing or warning the party complained against to do or not to do a certain act "under pain of the law and contempt thereof." Thus, there may be a monition for personal answers (see ANSWER), for payment of costs, requiring a clergyman to reside, etc. A monition may also be appended to a sentence inflicting a punishment for a past offence: in that case the monition forbids the repetition of the offence.

See ADMONITION.

Monitory Letters. Letters from an ecclesiastical authority with regard to scandals and abuses within the cognisance of the ecclesiastical Courts. They are not, however, a recognised part of the procedure of such Courts.

Monmouthshire. This is part of Wales for the purposes of the Ministry of Health Act, 1919: see s. 11 (3). In the Census (Great Britain) Act, 1910, it is not expressly declared to be part of Wales for the purposes of that Act, but (see s. 4 (1) (e)) it is dealt with much as if it were. For the purposes of the Welsh Church Act, 1914 (which disestablished the Church in Wales), it is part of Wales: see s. 1. The Welsh Intermediate Education Act, 1889, deals with it as if it were part of Wales. The Ministry of Agriculture and Fisheries Act, 1919 (see AGRICULTURE AND FISHERIES, ETC.), provides, by s. 6, that for the purposes of that Act it shall be in Wales and not in England. For the purposes of National Health Insurance it is in Wales (see INSURANCE COMMISSIONERS). But, apart from these enactments, Monmouthshire is in England and not in Wales. The Small Holdings Colonies Act, 1916, s. 1 (3), makes it part of England for the purposes of that section.

Monopoly is a licence or privilege allowed by the Sovereign for the sole buying and selling, making, working, or using of anything whatsoever. Monopolies were made illegal by the statute 21 Jac. 1, c. 3 (popularly known as the Statute of Monopolies), except in the case of patents for new inventions and a few other instances. (See PATENT). Ancient franchises existing either by grant or by prescription, such as the tolls of a bridge, ferry, or market, are not within the statute.

Monster, in the technical sense, is a child "which hath not the shape of mankind." It cannot inherit or purchase land; and, therefore, the birth of a monster does not entitle a husband to curtesy. All this is the learning of Coke. But Coke spoke in contemplation of the possibility of there being something which was not of human shape and which resembled an animal rather than a man, although one at least of the parents was a human being. Such a creature is now known to be an impossibility.

Monstrans de droit was a remedy which a subject had when the Crown was in possession of property belonging to him, and title of the Crown appeared from facts set forth upon record. In such a case the claimant might present a *monstrans de droit* ("manifestation of right"), either showing that upon the facts as recorded he was entitled to the property, or setting forth new facts showing that he was entitled. Thus if A. disseised B. of land and then died without heirs, whereupon the land was adjudged to the Crown by inquest of office (q.v.), here the Crown's title appeared upon record, and B.'s remedy was therefore by *monstrans de droit*, setting forth his disseisin by A. This remedy is now, however, prac-

tically superseded by Petition of Right (q.v.). See OUSTERLEMAIN; TRAVERSE.

Monstrans de faits (or Records). Producing the deeds or records. After the plaintiff in an action on, for instance, a bond, had delivered his declaration (q.v.) he was bound under the old common law practice to exhibit his bond. See PROFERT.

Monstraverunt. A writ which anciently lay for tenants in ancient demesne when required to perform services to which they were not liable.

Montague Close. See PRIVILEGED PLACES.

Montesquieu. Charles de Sécondat, Baron de la Brède et de Montesquieu, was born 1st January, 1689, and died 10th February, 1755. He wrote *L'Esprit des Lois*, and various historical and other works.

Months are either lunar, consisting of twenty-eight days, and of which thirteen make a year: or calendar, which are of unequal lengths according to the almanac or common calendar, and of which twelve make a year. By the common law, a "month" means in matters temporal a lunar month, and in matters ecclesiastical a calendar month; but in Acts of Parliament passed after 1850 "month" means calendar month, unless a contrary intention appears (Interpretation Act, 1889, s. 3). As regards the Rules of the Supreme Court, a month means a calendar month (R.S.C., Ord. 54, r. 1), and the same is the case as regards bills of exchange (Bills of Exchange Act, 1882, s. 14 (4)), and as regards commercial transactions within the custom of the City of London. But in commercial contracts generally, as well as in legal documents, such as wills, deeds, etc., "month" means a lunar month unless there be evidence that a calendar month was meant.

Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia (*Co. Litt.* 118). (The written documents which we call records are the footprints of truth and antiquity.) Coke is here speaking of the dignity of Courts of record.

Moot. See GEMOTE.

Moots are exercises in pleading, and in arguing doubtful cases and questions, by the students of an Inn of Court (q.v.) before the benchers of the Inn. They were, like bolts (q.v.), also held in the Inns of Chancery up to the time when these institutions ceased to perform educational functions.

Mop. See STATUTE FAIR; MARKETS AND FAIRS.

Mora debitoris non debet esse creditori damnosa (*Pothier*). (Delay on the part of one under a duty ought not to be injurious to him to whom the duty is owing.) This is a qualification of the principle embodied in the maxim *Damnum sentit*, etc. Thus, where there is delay in giving or taking delivery of goods sold, then the goods, as from the date of the commencement of the delay, are at the risk of the party in default as regards any loss which might not have been incurred but for the default.

Moral Consideration. See CONSIDERATION.

Moral Imbecile. The Mental Deficiency Act, 1913, s. 1, defines moral imbeciles as "persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has little or no permanent effect." See MENTAL DEFICIENCY.

Moratur in lege. (He tarries in the law.) It meant "he demurs"; for in a demurrer the party demurring did not go on with his case but elected to stand or fall by the judgment of the Court upon the point raised on demurrer (q.v.).

"More or less." These words, in the expression "be the same more or less," were formerly generally used in a contract for the sale of land to cover any slight inaccuracy in the area as stated. The conveyance would run, "containing ten acres statute measure be the same more or less." They would, however, cover only a very slight deficiency in the area: what precisely they cover has never been accurately laid down; and for any considerable deficiency the purchaser would be entitled to an abatement of the agreed price. The more general form now is "ten acres or thereabouts," which may be still more briefly put as "about ten acres."

Morganatic Marriage. A marriage between two persons of unequal rank which is valid and indissoluble, but in which the spouse of lower rank does not assume the rank of the other and of which the children do not inherit the dignity nor, as of right, the possessions of the spouse of higher rank. Such a marriage is unknown to English law, but is recognised by the laws of various foreign States. Such marriages have not infrequently been contracted by royal personages, most of whom have been men: they have sometimes occurred in the case of ladies of royal rank who have married subjects.

Morgangina. A gift which, in Anglo-Saxon times, was made by a bridegroom to the bride the day after the wedding: see Leg. Hen. 1, c. 70; Leg. Canut. c. 99.

Morphine. See DRUGS, DANGEROUS.

Mors dicitur ultimum supplicium (3 *Inst.* 212). (Death is denominated the extreme penalty), because, as Coke explains, the law is satisfied by the execution of judgment of death and has the body buried instead of leaving it on the gallows. Coke had not anticipated hanging in chains.

Mors omnia solvit (*Jenk. Cent.* 160). (Death clears all scores). But not always: see ACTIO PERSONALIS, ETC.

Mort d'ancestor. See ASSISE OF MORT D'ANCESTOR.

Mortgage. A mortgage is where one person (the mortgagor) secures to another (the mortgagee) the payment of money (whether already owing, or advanced at the time, or to be advanced subsequently), by vesting in him some property or interest in property, subject to the mortgagor's right to redeem or buy it back by paying the money within a certain time, while the mortgagee has the right, after the lapse of a certain time, of enforcing his security, or making it available in obtaining payment of the money advanced. The sum secured by the mortgage is called the mortgage debt, although there is not necessarily any personal liability on the part of the mortgagor (as, for instance, in the case of a mortgage by trustees for raising portions). The term "mortgage debt" is also used to signify the security of the mortgagee, that is, his interest in the property mortgaged, and his other rights and remedies for obtaining satisfaction of the debt.

In a contributory mortgage there are two or more persons who advance the mortgage money in separate amounts. Such mortgages are, however, unsatisfactory and are therefore not usual.

The term "mortgage" is most commonly used as applied to land or other realty and leaseholds, but personalty may also be mortgaged, although the transaction is not generally called a mortgage, except in the case of ships and choses in action (*e.g.*, policies of assurance, copyrights, etc.). A mortgage of chattels in possession, such as furniture, is called a bill of sale (q.v.). A mortgage of stock in the funds, or of a public company, etc., may be made. Such a mortgage must be distinguished from what is technically called a stock mortgage, which is where A has sold a sum of stock (*e.g.*, Consols), and advanced the proceeds to B, who covenants to replace the stock (that is, to purchase and transfer to A a like amount of stock) at a future time, and executes a mortgage of land or other property to A as security for the covenant. The object of such a mortgage generally is that the mortgagee may obtain a higher rate of interest than that paid on the stock, and that he may be protected from the risk of the stock rising in price before the mortgage debt is repaid.

Mortgages are of three kinds, legal, equitable, and statutory.

I. A legal mortgage (so called because it was formerly the only one recognised at common law) is where A conveys property to B by deed, as a security for the repayment of money. If the property mortgaged consists of the fee simple of land, the deed contains a conveyance in the ordinary form. If the mortgagor is the owner of the fee simple, and grants a term of years as the mortgage security (formerly a common mode of mortgaging land), it is called a mortgage by demise. If the owner of a term or lease wishes to mortgage it, he may do so either by an assignment or by underlease. If the terms of the lease are onerous, the mortgagee generally prefers the latter mode, as he thus escapes liability to the original lessor. A legal mortgage may take one of five forms:—

(1) The old form was a conveyance, with a condition that it should be void on payment of the debt on a fixed day. In such a case the mortgagee had at common law an estate upon condition, and was called "tenant in mortgage." The condition was sometimes called a defeasance (q.v.) When the time for payment expired, the estate of the mortgagee became absolute at law, but remained redeemable in equity, whence the mortgagor was said to have an equity of redemption (q.v.). This form of mortgage has long been obsolete in all cases except mortgages of copyholds (see SURRENDER); and as the rules of equity now prevail, it seems that a conditional conveyance by way of mortgage cannot become absolute until foreclosure.

(2) At the present day, a mortgage is, in ordinary cases, effected by an absolute conveyance, followed by a proviso or agreement (express or implied), called the proviso for redemption, by which the mortgagee agrees to reconvey the property to the mortgagor on payment of the debt and interest by a certain date. Formerly, if the money was not paid on the day, the mortgage became irredeemable at common law, but the mortgagor had an equity of redemption until foreclosure or sale. The common law rule no longer exists. Incident to both these kinds of mortgage is the right of foreclosure, a right which entitles the mortgagee to compel the mortgagor either

to pay off the debt within a reasonable time, or to lose his equity of redemption. (See FORECLOSURE.) In addition to the rights thus created by operation of law, a legal mortgage generally contained, down to the 31st December, 1881, elaborate stipulations and provisions, mainly in the interest of the mortgagee. The principal of these are the power of sale, which enables the mortgagee to take possession of and sell the property, if default is made in payment of the principal or interest beyond a certain period, and the various powers of leasing and managing the property, and appointing a receiver, which are necessary for the proper management of a landed estate. They are now generally omitted. The Conveyancing Act, 1881, unless a contrary intention is expressed in the deed, gives the mortgagee and any person deriving title under him (i) a power of leasing (s. 18); (ii) a power to sell the mortgaged property, as soon as the money has become due (s. 19); (iii) a power to insure the property against fire, and to add the premiums to the mortgage debt, unless an insurance is kept up by the mortgagor (*ib.*); (iv) a power to appoint a receiver as soon as the money has become due (*ib.*; see RECEIVER.) The power to sell or appoint a receiver is not exerciseable unless the mortgagor has failed for three months to comply with a notice requiring him to pay off the mortgage debt, or unless interest is in arrear for two months, or there has been a breach of covenant, etc. (*ib.* ss. 20, 21); but these restrictions do not affect the title of a purchaser buying under the power of sale (*ib.* s. 21). The Conveyancing Act, 1911, s. 3, extended the power of a mortgagee under s. 18 of the Act of 1881, as regards leases; by s. 4, it extended his power of sale under s. 19 of the Act of 1881; and by s. 5 it amended s. 21 of the Act of 1881. As to the other powers of a mortgagee, see MORTGAGEE IN POSSESSION; PAYMENT INTO COURT: see also REDEEM. Section 25 of the Act of 1881 gives to the Court very wide powers of directing the sale of mortgaged property in any action brought respecting a mortgage, whether for redemption, foreclosure or otherwise.

(3) A mortgage may also take the form of a conveyance by the borrower to the lender (or his nominee), upon trust to sell it, and, after satisfying the debt and expenses, etc., to pay the surplus proceeds (if any) to the mortgagor. Such a mortgage does not give the right of foreclosure, but in all other respects it seems to be similar to an ordinary mortgage; and hence, if the mortgagee remains in possession for more than twelve years, without giving a written acknowledgment of the mortgagor's title, the mortgagor's right to redeem is gone (Real Property Limitation Act, 1833, Real Property Limitation Act, 1874, s. 1).

(4) A Welsh mortgage is said to be a mortgage under which the mortgagee is let into possession of the mortgaged land until the rents and profits repay the principal and interest, the property being redeemable at any time on payment of the amount remaining due. But this is sometimes described as "a mortgage in the nature of a Welsh mortgage,"—a genuine Welsh mortgage being defined as the conveyance of an estate redeemable at any time on payment of the debt, without payment of interest by the borrower, or account of the rents and profits by the lender, who is let into possession from the beginning, and takes the rents in lieu of interest. A Welsh mortgage does not admit of foreclosure, as the mortgagee does not stipulate for redemption. Such a mortgage is now very unusual.

(5) A sub-mortgage is a mortgage by a mortgagee of his mortgage debt with a transfer of the mortgage security; the original mortgagee is then called sub-mortgagor in respect of the sub-mortgage. A further charge is an agreement that a subsisting mortgage shall be a security for a further advance by the mortgagee. A further security is a mortgage of some additional property, or a grant of additional remedies to secure a subsisting mortgage debt.

II. An equitable mortgage is one which passes only an equitable estate or interest, either (1) because the form of transfer or conveyance used is an equitable one, that is, operates only as between the parties to it, and those who have notice of it, or (2) because the mortgagor's estate or interest is equitable, that is, consists merely of the right to obtain a conveyance of the legal estate. Of the former class, the principal kinds are (a) an agreement to execute a legal mortgage; (b) a deposit of title deeds, share certificates, land certificates, or other documents of title, either with or without a memorandum of deposit, that is, a statement in writing that the documents are deposited by way of security. An equitable mortgage of the second class occurs in the case of a mortgage of an equity of redemption; thus, if A mortgages his estate to B, and then mortgages it again to C, though in terms professing to convey the legal estate, C has an equitable mortgage, because it is in

effect only a charge on A's equity of redemption.

III. A statutory mortgage is one which, by virtue of the provisions of a statute, produces almost the same effect as an ordinary mortgage, without operating as a transfer or conveyance of the property. Thus, a mortgage of land registered under the Land Transfer Act, 1875, ss. 22-28, is effected by an "instrument of charge" executed by the mortgagor and entered on the register. So a "mortgage" of a ship under the Merchant Shipping Act, 1894, s. 31, does not operate as a conveyance, but merely gives the mortgagee a charge with (s. 34) a power of sale.

A statutory mortgage of freehold or leasehold land, operating by conveyance, may be made under the Conveyancing Act, 1881, s. 26. The Act also provides for the transfer and reconveyance of a statutory mortgage (ss. 27-29).

See CHARGE; CONSOLIDATION OF SECURITIES; EQUITY OF REDEMPTION; PAWN; PLEDGE; RECEIVER; RECONVEYANCE; TACKING.

The word mortgage is a compound of the Norman-French, *mort*, dead, and *gage*, a pledge, from low Latin, *vadium*, which in its turn comes from either Latin, *vas*, *vadis*, a surety, or Germanic, *wetti*, *ved*, a bond, or from a combination of the two. Notwithstanding the authority of Littleton, who says that a mortgage (or *vadium mortuum*) is so called because if the feoffor does not pay on the appointed day the land is dead to him, and if he does pay then it is dead to the feoffee, it seems quite clear that "mortgage" originally denoted a pledge of land under which the creditor took the rents and profits for himself, so that it was dead or profitless to the debtor, as opposed to a pledge under which the rents and profits went in reduction of the debt (*vif gage*, *vadium vivum*). For another instance of *mort* in the sense of profitless see MORTMAIN.

"Mortgagee, As." See COVENANTS.

Mortgagor and Mortgagee in Possession. A mortgagor in possession is in the same position as an ordinary landowner, except that he must not prejudice the security by committing waste. He is entitled to collect rents under leases granted before the mortgage, until the mortgagee gives the tenants notice of the mortgage; and, under s. 25 of the Judicature Act, 1873, he may bring actions in his own name in respect of the possession or rents of the land. A limited power of leasing is sometimes given to the mortgagor by the mortgage.

A mortgagee in possession is bound to account to the mortgagor for the rents and profits which he has received, or ought with proper management to have received, and is liable for waste.

By the Conveyancing Act, 1881, s. 18, as extended by the Conveyancing Act, 1911, s. 3, a mortgagor or mortgagee of land, while in possession, has a power of making binding leases of the mortgaged land, subject to certain limitations and restrictions as to the length of the term, the rent, etc. By s. 19 (1) (iv.) of the same Act, a mortgagee in possession of land has power to cut and sell timber and other trees ripe for cutting, not being used for shelter or ornament. These provisions apply only so far as a contrary intention is not expressed by the parties (s. 19 (1)). See MORTGAGE.

Morth; Morthlaga. Anglo-Saxon for murder and murderer respectively.

Mortmain. The term mortmain is applied to two classes of statutes.

I. The statutes prohibiting alienation in mortmain, in the strict sense of the word, that is, alienation of land to corporations, are Magna Charta, the statute *De Viris Religiosis* (7 Edw. 1), the Statute of Westminster II. (13 Edw. 1, c. 32), and the statute 15 Rich. 2. These statutes prohibited not only direct grants of land to corporations, whether sole or aggregate, but also several contrivances by which the religious houses (against which the statutes were especially directed) attempted to elude their provisions. (See USE.) Their effect was, that if land was granted to a corporation without a licence from the Crown, and from the feudal lords of whom it was mediately or immediately holden, then within a certain time the immediate lord might enter on or take possession of the land, which thus became forfeited to him; or, if he failed to do so, each lord paramount had the right to enter in his turn, and in default of all of them the Crown. In modern times, however, the rights of intermediate lords became unimportant, and by the statute 7 & 8 Will. 3, c. 37, it was enacted that the Crown for the future might grant licences to alien or take land in mortmain, of whomsoever it might be holden. The Act of William III. was repealed by s. 13 of the Mortmain and Charitable Uses Act, 1888, and was in substance re-enacted by Pt. I. (ss. 1-3), of the latter Act. Many corporations are exempt under various statutes from the operation of the Statutes of Mortmain: such are the universities and colleges of Oxford and Cambridge, associations formed under the Companies Acts, the Building

Societies, Friendly Societies, and Industrial and Provident Societies Acts, etc. Any unincorporated charity may, with the consent of the Charity Commissioners, hold and invest money in land (Charitable Trusts Act, 1855, s. 35; Charitable Funds Investment Act, 1870, s. 1).

II. In the popular use of the word, the Mortmain Act is the Act of 9 Geo. 2, c. 36 (more accurately called the Charitable Uses Act, 1735), which prohibited gifts of land or of money to be laid out in the purchase of land for any charitable purposes, except by absolute and immediate conveyance by deed, executed twelve months before the death of the donor, and enrolled with certain formalities, the object being to prevent improvident alienations or dispositions of land by languishing or dying persons to the disherison of their lawful heirs. Therefore, all gifts by will of land and of money arising out of or connected with land, for charitable purposes, were void under that Act. The Act was passed to supplement the provisions of the Statutes of Mortmain (*supra*), and of the Act against superstitious uses (q.v.); because, although charities are not generally corporations, yet gifts to them are practically in perpetuity, and are therefore contrary to the policy of the law, which favours free dealing in land.

The Act of 1735 was repealed in 1888, except as regards the section mentioned under CHARITABLE USES ACTS, after having had some of its more stringent provisions modified by various Acts passed before 1888, and is now replaced by Part II. of the Mortmain and Charitable Uses Act, 1888, which (s. 4 (7) (8) (9)) provides, with regard to gifts *inter vivos* for charitable uses (q.v.), that a voluntary assurance, except of public funds, must be made twelve months before the death of the donor, a voluntary assurance of public funds must be made six months before his death, and all voluntary assurances, whether of realty or of personalty, except assurances of public funds, must be enrolled at the Central Office (q.v.) within six months of execution, and will otherwise (s. 4 (1)) be void. Up to this point no gift of lands for charitable uses could be made by will. But the Mortmain and Charitable Uses Act, 1891, effected a complete change in the law by enacting (s. 5) that "land may be assured by will to or for the benefit of any charitable use, but, except as hereinafter provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting in chambers, or by the Charity Commissioners" (q.v.). Section 8 (as to which see the Board of Education Act, 1899, and Orders made thereunder) provides for the retention of the land where it is required for the use of the charity and not as an investment.

The Act of 1891 for the first time excluded from the definition of land (q.v.) "money secured on lands or other personal estate arising from or connected with land."

The word mortmain is derived from the Norman French, *morte meyn*; low Latin, *mortua manus*, a dead hand, because, says Coke, "the lands were said to come to dead hands as to the lords, for that by alienation in mortmaine they lost wholly their escheats, and in effect their knights-services for the defence of the realme; wards, marriages, reliefes, and the like; and therefore was called a dead hand, for that a dead hand yeeldeth no service." (*Co. Litt.* 2B.)

See ABATEMENT OF LEGACIES.

Mortuaries. In the modern sense of the word, a mortuary is a place for the reception of dead bodies before interment. Under the Public Health Act, 1875, ss. 141, 142, every local sanitary authority is empowered to provide a mortuary, and to cause dead bodies to be removed to it in cases where their retention in dwelling-houses might be prejudicial to the health of the inmates.

In Church law, mortuaries are a sort of ecclesiastical heriots, being a customary gift claimed by and due to the minister in very many parishes on the death of one of his parishioners. The nature of the gift formerly varied according to the custom of the place, being frequently the next best chattel of the deceased, after the lord's heriot. But by the statute 21 Hen. 8, c. 6, mortuaries were fixed at certain sums, in no case exceeding 10*s*., and are not payable at all unless they were legally payable in 1529.

In the Welsh dioceses of Bangor, Llandaff, St. David's and St. Asaph's, the statute 21 Hen. 8, c. 6, s. 7, legalised the taking of mortuaries by the bishop on the death of any of the diocesan clergy. The statute 13 Ann. c. 6, s. 1, after reciting that these mortuaries often amounted to "a very considerable part" of the estate of the deceased, wholly abolished this right. See CORSEPRESENT.

Mortuum vadium. A mortgage.

Mote. See GEMOTE.

Moteer. A customary payment at the

court of the lord: some persons were exempted by charter.

Motion. A motion is an application to a Court or a judge. Some motions are made without reference to any pending action, as where (under r. 217 of the Crown Office Rules, 1906) application is made for a writ of *habeas corpus* (q.v.). Other motions are employed to obtain a judgment on the main question in an action (see MOTION FOR JUDGMENT); but these are not motions in the sense in which the word is commonly used, namely, to denote an interlocutory application in an action. As a general rule, a motion is an oral application made by counsel in open Court, as opposed to a petition, which is a written application, and to a summons, which is made in chambers, unless it be an originating summons. See SUMMONS.

Ordinarily a motion is to be made only after notice has been given to the parties affected (Ord. 52, r. 3); but where before the passing of the Judicature Act, 1873, any order or rule might have been made absolute *ex parte* in the first instance, or where an order (q.v.) may still be made to show cause, or where the Court or a judge thinks it necessary that an order should be made at once, then the motion may be moved *ex parte*, and any party affected by an order applied for *ex parte* may move to set it aside (*ib.*). As to motions on the Crown side to a Divisional Court, see RULE.

Applications for an injunction or for a receiver under s. 25 (8) of the Judicature Act, 1873, may be made *ex parte* (Ord. 50, r. 6); so also may motions of course.

A motion of course is a motion which is granted by the Court as a matter of course: for an instance, see FORECLOSURE.

In Chancery practice, if counsel is unable to make a motion on the day for which notice has been given, he is entitled, as a matter of right, "to save the motion," that is, to adjourn it to the next motion day by mentioning it to the Court, without the consent of the other side; but in cases where the motion was listed by special leave he can do this only with the consent of the other side or with the leave of the Court.

If counsel does not either bring on or save his motion on the day for which notice has been given (provided of course he has had an oportunity of being heard), the motion is said to be abandoned, and the other side is entitled to his costs of it.

As to motions by way of appeal, see APPEAL.

Motion for Decree. Under the practice of the old Court of Chancery the most usual mode of bringing on a suit for hearing when the defendant had answered was by motion for decree. To do this the plaintiff served on the defendant a month's notice of his intention to move for a decree. (See DECREE; FURTHER CONSIDERATION.) Now, of course, the plaintiff merely replies and gives notice of trial in his reply (Ord. 36, r. 11) or subsequently (*ib.* r. 14).

Motion for Directions. Formerly, in divorce and probate practice, after the pleadings had been concluded, it was necessary to make a motion to obtain the directions of the Court as to the manner in which the questions of fact raised by the pleadings were to be tried. This practice has long been abolished, and a cause at issue is now set down for trial in accordance with a general order of the Court. The motion for directions was quite distinct from the summons for directions. See DIRECTIONS.

Motion for Judgment is the mode of obtaining the judgment of the High Court in an action in all cases where no other mode of obtaining it is prescribed (Ord. 40, r. 1). At the trial of an action the judge must now (Ord. 36, r. 39) direct judgment to be entered as he thinks right, and no motion for judgment is necessary. If the defendant makes default in delivering his defence, the plaintiff must set down the action on motion for judgment, unless it is of such a nature that he may enter judgment for his claim at once (*e.g.*, where it is for a debt, damages, recovery of land, or the like). See Ord. 27, r. 11 and preceding rules of that Order.

A motion for judgment requires to be set down in the cause list, and notice of it is given to the other side. See MOTION.

Motions for judgment are rare in the King's Bench Division. In the Chancery Division they are more frequent.

Motion for New Trial. See TRIAL.

Motion in Arrest of Judgment. See ARREST OF JUDGMENT.

Motion to Set Aside Judgment is a step taken by a party in an action in the High Court who is dissatisfied with the judgment directed to be entered at the trial of the action, on the ground either that the finding of the jury has been wrongly entered, or that the judgment itself is wrong (Ord. 40, rr. 3, 4). The motion is made to the Court of Appeal (*ib.* r. 5).

Motor Cars. There are two classes of locomotives in use on highways: (1) Heavy locomotives, as to which see LOCOMOTIVES; and (2) light locomotives (or motor cars), that

is to say vehicles propelled by mechanical power (Locomotives on Highways Act, 1896, s. 1) not exceeding five tons of unladen or, with a trailer, six-and-a-half tons (Heavy Motor Car Order, 1904, Art. III., made pursuant to the Motor Car Act, 1903, s. 12). Anything over these weights is a heavy locomotive. Light locomotives are divided into two classes: (1) "Heavy motor cars," that is to say motor cars exceeding two tons in weight unladen (Heavy Motor Car Order, 1904, Art. II.); (2) motor cars of any less weight.

A motor cycle obviously comes within the definition of a motor car.

No light locomotive is subject to the provisions of the Locomotives Acts, 1861 and 1865 (Act of 1896, s. 1, Sch.). The enactments applying to them are the Acts of 1896 and 1903 which are mentioned in this article and the Roads Act, 1920, and the various regulations and orders made pursuant to those Acts, some of which apply only to heavy motor cars, others only to other motor cars, and some both to one class and the other.

The Motor Car (International Circulation) Act, 1909, and the Motor Car (International Circulation) Order, 1910, made thereunder, provide for the cases of foreign-owned cars visiting this country and of British-owned cars visiting foreign countries.

A customs duty on imported motor cars at the rate of thirty-three and one-third per cent. is imposed by the Finance (No. 2) Act, 1915, s. 12.

As to licences for drivers of motor cars, see the Motor Car Act, 1902, s. 3. As to licences for cars see the Roads Act, 1920, ss. 1, 5; and as to registration and identification marks see s. 6 of the same Act.

See HIGHWAYS.

Motor Spirit. For definition, see the Finance (1909-10) Act, 1910, s. 84 (7).

Mulier is applied in the old books to a son, daughter, brother, sister, etc., to signify one born in lawful wedlock, or legitimate, as opposed to a bastard. (Norman-French, *mulieré;* from Latin, *mulier*, a wife.) The expression was formerly of importance in what was called the case of "bastard eignè and mulier puisnè" ("eldest son a bastard and younger son legitimate"), which occurred where a man had a bastard son, and afterwards married the mother and by her had a legitimate son. If the father died and the bastard entered on his land and died seised of it, so that it descended to his issue, the mulier puisnè was barred of his right to the land. The doctrine seems to have been abolished by the Real Property Limitation Act, 1833, s. 39. See BASTARD.

Mulieres ad probationem status hominis admitti non debent (*Co. Litt.* 6). (Women ought not to be admitted to prove the status of a man [where the question is whether he is a villein].)

Mulierity. The status of one born in wedlock as distinguished from a bastard. See *Co. Litt.* 352*b*.

Multa or **Multura episcopi.** This is explained by Coke to have meant a fine anciently paid by bishops to the king for the privilege of being allowed to make their own wills and in order to secure the right of granting probate of other men's wills.

Multa conceduntur per obliquum, quæ non conceduntur de directo (6 *Co.* 47). (Many things are allowed by a side-wind which are not allowed directly.)

Multa in jure communi, contra rationem disputandi, pro communi utilitate introducta sunt (*Co. Litt.* 70). (For the sake of the public good many things which are logically indefensible have been made part of the common law.)

Multa multo exercitamentis facilius quam regulis percipies (4 *Inst.* 50). (There are many things which you will learn much more easily from practice than from rules.) Coke is here speaking of parliamentary procedure.

Multifariousness. Under the practice of the old Court of Chancery, a bill of complaint was open to a demurrer for multifariousness when it attempted to embrace too many objects or causes of suit. Under the present practice, a plaintiff may include as many causes of action as he pleases in one writ, except in the case of actions for the recovery of land, actions by trustees in bankruptcy, etc., and in the case of one action being brought for several claims which cannot be conveniently disposed of together (Ord. 17, rr. 1, 2, 3). (See JOINDER.) But a claim for possession of the land in question may be made in an action for foreclosure or redemption (Ord. 17, r. 2).

Multiplicata transgressione, crescat pœnæ inflictio (2 *Inst.* 479). (Where wrongdoing is multiplied the infliction of punishment increases also—which seems to mean that habitual offenders should get heavy sentences.)

Multiplication. The "multiplication" of gold and silver was made felony by the statute 5 Hen. 4, c. 3. This "multiplication" was the imaginary or pretended manufacture of gold or silver out of other metals. See PHILOSOPHERS' STONE.

Multiply. When a thing is divided into several parts, and something which was dependent on or annexed to it thenceforward becomes dependent on or annexed to each part of it, the accessory is said to be multiplied. Thus, if a copyhold tenement for which a heriot is due to the lord on the death of each successive tenant, is divided into parcels and conveyed to different persons, the heriot will be multiplied, *i.e.*, a heriot will be due for each parcel.

Multitudinem decem faciunt (*Co. Litt.* 257). (Ten make a multitude.) So at least "some have said," remarks Coke, who is considering what precisely is meant by the word "multitude" where it was said that one "occupied the tenements . . . with a multitude of people." Coke himself says that the question is one for "the discretion of the judges"—which is obviously the correct view.

Multitudo errantium non parit errori patrocinium (11 *Rep.* 75). (The fact that many persons have made any given mistake does not tend to show that it is right.)

Multitudo imperatorum perdit curiam (2 *Inst.* 219) (A multitude of masters destroys a court.) Quoted by Coke as a comment on the provisions against extortion by officers of the Court which are contained in the Statute of Westminster I., c. 30. It is not an authority for the proposition that cases are better heard by a single stipendiary magistrate than by a multiplicity of justices.

Multo. A sheep. *Multones auri* (literally, "golden sheep"), mentioned in a patent of Edward I., were French gold coins which sometimes circulated in England.

Multure. The same as molitura (q.v.).

Municipal Corporation is a corporation consisting of all or part of the inhabitants of a town, and having the power and duty of enforcing the good rule and government of the place, including the lighting, cleansing, paving and improving of the streets, the prevention of nuisances, etc. Municipal corporations, except that of the City of London, are regulated by the Municipal Corporations Act, 1882, which provides for the election in each borough of a mayor, aldermen and council: for the appointment of a watch committee to regulate the police of the borough, and for the payment of the expenses of the borough out of the borough fund and rate. Municipal corporations are also the authorities for carrying out the provisions of the Public Health Act, 1875, and similar acts, in their respective districts.

Corporations regulated by the Municipal Corporations Act, 1882, are trustees of the corporate property for the benefit of their respective boroughs.

See BOROUGH; JUSTICE OF THE PEACE; LONDON; METROPOLITAN BOARD OF WORKS; RECORDER; WARDS.

Municipal Law. See LAW.

Muniments. Title deeds and other documents relating to the title to land are sometimes called muniments, from the Latin word *munio*, which signifies to defend or fortify, because they enable the owner to defend his estate.

Munitions of War. Patents for improvements in instruments or munitions of war may be assigned to the Secretary of State for War or the Admiralty, and this may be done in such manner as to ensure secrecy (Patents and Designs Act, 1907, s. 30).

See CONTRABAND OF WAR; FOREIGN ENLISTMENT.

Murage. Mentioned in the statute 3 Edw. 1, c. 30, as having been granted by the Crown to certain citizens and burgesses "*por lor vile enclose*" (for the enclosing of their town). It was a toll, or the right to levy a toll, for the erection or maintenance of town walls, upon persons passing through the town.

Murder is the crime of unlawful homicide with malice aforethought (see HOMICIDE; MALICE; MANSLAUGHTER); as where death is caused by an unlawful act done with the intention to cause death or bodily harm, or which is commonly known to be likely to cause death or bodily harm. Thus, if A finds B asleep on some straw and lights the straw, whether he means to kill B, or whether he means to do B serious injury without killing him, in either case if B is burnt to death, A is guilty of murder. So if A unlawfully shoots at B, intending to kill him, and kills C instead, A is guilty of murder.

Murder is punishable by death (q.v.); attempts to murder are punishable by penal servitude for life (Offences against the Person Act, 1861, ss. 1, 11, 14, 15).

A person who kills himself in a manner which, in the case of another person, would amount to murder, is guilty of self-murder or suicide (q.v.); and see FELO DE SE.

Murdrum. Anciently this meant a homicide in respect of which the murder fine was payable.

See ENGLECERY.

Muscovy Company. A company, also known as the Russia Company, which origin-

ated in the reign of Edward VI., and which in 1555 received a charter authorising discovery and colonization as well as granting the monopoly of the Russia trade. It had a *quasi*-official position in Russia, and until, upon the execution of Charles I., it lost the favour of the Czar, it was predominant amongst the foreign traders there. Until recently it levied—with the consent of the Russian Government—certain duties upon exports from Russia to England, and out of the proceeds paid the English consuls in Russia and defrayed the expenses of the Anglican chapels at Petrograd and Moscow. It has ceased to trade, and now exists only as the owner of certain funds.

Music. The enactments mentioned under dancing (q.v.) apply also to public music, public singing, or the like.

See COPYRIGHT; STREET MUSIC.

Muster-Master General. An officer who kept lists of the forces of the Crown. He is mentioned in the statute 35 Eliz. c. 4, and in 1802 there was still a "Commissary and Muster-Master General."

Mute. A prisoner is said to stand mute when, being arraigned for treason, felony, or misdemeanour, he either makes no answer at all, or answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise. In the first case, a jury must be sworn to try whether the prisoner stands mute of malice (*i.e.*, obstinately) or by visitation of God (*e.g.*, being deaf or dumb). If he is found mute by visitation of God, the trial proceeds as if he had pleaded not guilty; if he is found mute of malice, or if he will not answer directly to the indictment, the Court may, under the Criminal Law Act, 1827, s. 2, and as a matter of course always does, order a plea of not guilty to be entered, and the trial proceeds accordingly. See PEINE FORTE ET DURE.

Mutilation. See MAYHEM.

Mutiny Act. The Bill of Rights (1 W. & M. sess. 2, c. 2), declares that the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law. Therefore, to enable the Army to be kept up, an Act of Parliament is annually passed authorising this to be done. Formerly this annual Act contained elaborate provisions for the enlistment, payment and billeting of soldiers, for the punishment of mutiny and desertion, and generally for the government of the Army, and was hence called the Mutiny Act; but these provisions were consolidated in the Army Discipline and Regulation Act, 1879; and, therefore, in the annual Act it was sufficient to provide that the Army Discipline and Regulation Act, 1879, should remain in force for one year. The Act of 1879 was supplemented and amended by various Acts, especially the Regulation of the Forces Act, 1881, and was itself replaced in 1881 by the Army Act. The last-mentioned Act is annually re-enacted, frequently with amendments, by the Army Annual Act, which also fixes the number of men to be maintained in the Army during the current year. The Army Annual Act for the time being in force is now the authority for the existence of the Army, and since 1879 there has been no Mutiny Act.

Mutual Credits; Mutual Dealings. The phrase "mutual credits" used in the Bankruptcy Act, 1914, denotes such dealings between two persons as must in their nature terminate, or have a tendency to terminate, in debts. The Act provides by s. 31 that where there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and one of his creditors, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings and the sum due from the one party shall be set off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively. The effect produced by the mutual credit clause is, therefore, a species of set-off (q.v.), but differs from the ordinary set-off between solvent persons in having for its object, not to prevent cross actions, but to avoid the injustice, which would otherwise arise, of compelling a creditor to pay the trustee in bankruptcy the full amount of the debt due from him to the bankrupt, while the creditor would perhaps only receive a small dividend under the bankruptcy on the debt due from the bankrupt to him.

Mutuality. In every agreement the parties must, as regards the principal or essential part of the transaction, intend the same thing; that is, each must know what the other is to do: this is called mutuality of assent.

In a simple contract arising from agreement, it is sometimes the essence of the transaction that each party should be bound to do something under it: this requirement is called mutuality; thus, an agreement by A to refer a question between him and B to arbitration is not enforceable, unless B also agrees to be bound by the award; and an agreement by

C with D to learn a trade is not binding unless there is also an undertaking by D to teach him. This may be called mutuality of obligation.

Mutuality of remedy is where each party can enforce the contract against the other; thus, a vendor of land can enforce specific performance of the contract by the purchaser, because the purchaser could have done the same to him; on the other hand, mutuality of remedy does not exist where one of the parties to a contract is under disability, or where it is required by the Statute of Frauds to be in writing, and he has not signed it, because, though he can enforce it, the other party cannot.

Mutual Promises. See CONSIDERATION; PROMISE.

Mutual Wills. See WILLS.

Mutuatus. "If a man oweth another person £10 and hath a note for the same, without seal, action of Debt lies upon a *mutuatus*; but in this there may be Wager of Law, which there may not be in Action on the Case, on an implied promise of payment," says an old writer, cited in Jacob. As to wager of law, see COMPURGATION.

N

Nail. An ancient measure, sometimes of weight, in which case it was usually eight pounds and was used with regard to cheese, beef, etc., and sometimes of length, in which latter case it was two-and-a-half inches and was used for cloth.

Nam; Naam; Namium. Anciently these words meant the taking or distraining of another man's goods. The term, in its Latinized form, is found in the laws of Canute; and in the Anglo-French form of *naam* it is found in Britton (1290) and in the *Termes de la Ley* (1641). *Naam vif* meant a distress of cattle; *naam mort* was a distress of other chattels.

Namium vetitum was the proceeding which lay where distress had been unlawfully concealed or carried out of the country; and *namium repetitum* was a second distress.

Namation. A later form of *nam* (q.v.).

Name. See CHRISTIAN NAME; SURNAME; REGISTRATION OF BUSINESS NAMES.

Name and Arms Clause is the popular name for the clause, sometimes inserted in a will or settlement by which property is given to a person, for the purpose of imposing on him the condition that he shall assume the surname and arms of the testator or settlor, with a direction that if he neglects to assume or discontinues the use of them, the estate shall devolve on the next person in remainder.

Narrator. Anciently a pleader or reporter. A *serviens narrator* meant in the time of Fleta a serjeant-at-law.

Narrow-land. The same as selion (q.v.).

National Assembly of the Church of England. This "means the Assembly constituted in accordance with the constitution set forth in the Appendix to the Addresses presented to His Majesty by the Convocations of Canterbury and York on the 10th day of May, 1919, and laid before Parliament" (Church of England Assembly (Powers) Act, 1919 (9 & 10 Geo. 5, c. 76), s. 1 (1)). This assembly is known as the Church Assembly (*ib*). The constitution above referred to provides that the Assembly shall consist of the House of Bishops, the House of Clergy and the House of Laity; that the House of Bishops is to consist of the members of the Upper Houses of the two Convocations (q.v.); that the House of Clergy is to consist of the members of the two Lower Houses; that the House of Laity shall consist of representatives of the two Provinces (q.v.) elected in manner set forth in the schedule annexed to the constitution; that the Assembly shall meet at least once a year; that there shall be a Legislative Committee, consisting of members of all the three Houses, to whom all "measures" which it is desired shall become law shall be referred, and who shall thereupon take such action as may be authorised by statute in order that such "measures" may become law.

The Act provides that there is to be constituted at the commencement of each Parliament a committee of both Houses styled "the Ecclesiastical Committee," consisting of fifteen peers nominated by the Lord Chancellor and fifteen members of the House of Commons nominated by the Speaker (s. 2); that every "measure" relating to the Church of England which is passed by the Church Assembly shall be submitted by the Legislative Committee to the Ecclesiastical Committee, who are to report thereon to Parliament (s. 3); and that upon each House of Parliament resolving that such "measure" be presented to His Majesty it shall have the force of an Act of Parliament upon the Royal Assent being signified as in the case of Acts of Parliament (s. 4).

See Cripps' *Law Relating to the Church and Clergy* (7th ed.), p. 27 *et seq.*

See MEASURE.

National Debt. See FUND.

National Insurance. A system of compulsory State insurance for loss occasioned by ill-health and, in certain cases, for loss occasioned by unemployment, was introduced by the National Insurance Act, 1911, which provided that the moneys constituting the necessary insurance premiums should be provided in part by employed persons, in part by employers, and, as to the balance, out of public funds. The Act consisted of Part I. (ss. 1-83), relating to National Health Insurance; Part II. (ss. 84-107), relating to Unemployment Insurance; and Part III. (ss. 108-115), containing miscellaneous provisions.

The Act of 1911, in so far as it relates to National Health Insurance, remains the basis of the present law on that subject; it and seven subsequent Acts by which it has been amended and extended are collectively entitled the National Health Insurance Acts, 1911 to 1921 (National Health Insurance Act, 1921, s. 5 (1)).

The Act of 1911, in so far as it related to unemployment, was amended first by the National Insurance (Part II. Amendment) Act, 1914, and then by other Acts relating specifically to unemployment as distinguished from ill-health: all these enactments were (National Insurance (Unemployment) Act, 1919, s. 4 (1)) collectively entitled the National Insurance Acts, 1911 to 1919. The whole of the Acts bearing this collective title were repealed by s. 48 of the Unemployment Insurance Act, 1920; and the last-mentioned Act now forms the basis of the existing law. But the process of amendment began again at once. The Act of 1920 was amended by the Unemployment Insurance Act, 1921; the Acts of 1920 and 1921 were both amended by the Unemployment Insurance (No. 2) Act, 1921; and further amendments have been made by the Unemployment Insurance Act, 1922, and the Unemployment Insurance (No. 2) Act, 1922.

A Legislative jungle such as that above-mentioned cannot be thoroughly explored in a work of this kind. But it may be said generally (I.) as to health insurance: Practically everyone, whether male or female, over the age of sixteen and under seventy, who is regularly employed under a contract of service within the United Kingdom must be insured, unless the employment is (1) otherwise than by way of manual labour and (2) at a rate (National Health Insurance Act, 1919, s. 1) exceeding £250, or is in the Civil Service, or with some statutory company which makes proper provision for its employees during sickness, etc.; the weekly contributions are (National Health Insurance Act, 1920, Sched. I.), normally at the rate of 10d. for a man and 9d. for a woman, out of which the employer pays 5d. in the case of a man and 5d. in that of a woman; but (*ib.*) special provisions apply to wages at rates not exceeding 4s. a day; and for these contributions the insured person gets (1) medical benefit, that is to say medical attendance, medicines, etc.; (2) sickness benefit, that is to say, an allowance during illness at the rate (National Health Insurance Act, 1920, s. 2) of 15s. per week for a man and 12s. 6d. per week for a woman during not more than twenty-six weeks, provided that twenty-six weekly contributions have been paid (National Insurance Act, 1911, s. 8); (3) disablement benefit, at the rate (National Health Insurance Act, 1920, s. 2 (1)) of 7s. 6d. per week, after sickness benefit has ceased, during any period of inability to work as the result of sickness, provided that 104 contributions have been paid (National Insurance Act, 1911, s. 8); (4) maternity benefit of 40s. (National Health Insurance Act, 1920, s. 2 (2)) for a woman on her confinement, if she or her husband have paid a sufficient number of contributions. And (II.) as to unemployment insurance: Under the Unemployment Insurance Act, 1920, ss. 1-4, practically everyone—over sixteen and under seventy—who is engaged in any employment involving manual labour, other than agriculture or private domestic service, or who is employed otherwise than by way of manual labour, at a rate not exceeding £250 a year, must (Unemployment Assurance Act, 1922, s. 2, Sched. I.) pay, at present, a weekly contribution of 9d. for a man, 7d. for a woman, 4½d. for a boy under eighteen, and 4d. for a girl under eighteen, while in each case the employer has to add 10d. to the man's contribution, 8d. to the woman's, 5d. to the boy's and 4½d. to the girl's, and the State also supplement these contributions; unemployment benefit is paid, subject to certain conditions, at the weekly rate of 20s. for a man and 16s. for a woman (Unemployment Insurance Act, 1920, Sched. II., as amended by the Unemployment Insurance Act, 1921, s. 1), during not more than twenty-six weeks (Unemployment Insurance Act, 1921, s. 4), in any one year. But the rates of unemployment benefit and of the contributions to secure it and the rules as to the periods during which it may be paid have been for some years, and apparently still are,

in a constant state of flux: and nothing except a reference to the various Acts, as altered and varied by subsequent Acts, is at any given time a reliable guide to the law bearing on the matter; text-books are inevitably out of date. At the present moment (January, 1923), there are in force various ephemeral provisions applicable to the abnormal amount of unemployment now existing: these cannot be set out here.

Nationality is that quality or character which arises from the fact of a person's belonging to a nation or State. Nationality determines the political status of the individual, especially with reference to allegiance (q.v.), while domicile determines his civil status. Nationality arises either by birth or by naturalization (q.v.) See BRITISH SUBJECT.

National Trust. The statutory short title given by the National Trust Act, 1907 (7 Edw. 7, c. cxxxvi.), s. 2, to the "National Trust for Places of Historic Interest" formed pursuant to that Act for the purpose of preserving, and with statutory powers to preserve, such places as are specified in the schedules to the Act. Their powers extend to the maintenance of such places for public resort and public recreation.

Nativi de stipite; Nativi de conventione. A nativus, or native, anciently meant a bondman or villein. In Cornwall at the time of Henry I. *nativi de stipite* were bondmen by birth, while *nativi de conventione* were bondmen by contract. See NEIFE; CONFESSION.

Nativo habendo, De. This was anciently a writ in the nature of a writ of right, which lay for a lord whose villein had absconded. It required the sheriff to apprehend the villein and restore him to the lord, and upon it the question was tried as to whether the alleged villein was a free man or the villein of the lord. See LIBERTATE PROBANDA, DE.

Natura Brevium. This was the *Natura Brevium* of the reign of Edward III.—a compilation giving the original writs then in use. After Fitzherbert (q.v.) had brought out his new *Natura Brevium* the earlier list was known as the *Old Natura Brevium*.

Naturæ vis maxima (*Noy. Max.* 26). (The force of nature is very great.) Quoted as a comment upon the *Articuli Super Cartas*, c. 11, which sanctioned as between relations what is between others would have been chamberty (q.v.).

Natural-born Subject. See ALLEGIANCE; BRITISH SUBJECT; NATIONALITY; NATURALIZATION.

Naturale est quidlibet dissolvi eo modo quo ligatur (*Jenk. Cent.* 70). (It is natural for a thing to be unbound in the same way in which it was bound.) "An obligation is not made void but by a release; . . . a record by a record; a deed by a deed; and a parol promise or agreement is dissolved by parol, and an Act of Parliament by an Act of Parliament." (*ib.*)

See EODEM LIGAMINE, ETC.; NIHIL TAM CONVENIENS, ETC.; LEX ANGLIÆ SINE, ETC.

Naturalization takes place when a person becomes the subject of a State to which he was before an alien. The effect of naturalization is that the naturalized subject thereby acquires all political and other rights, powers and privileges, and becomes subject to all obligations to which natural-born members of the State are entitled and subject, except that he cannot divest himself of his obligations towards the State of which he was formerly a subject, without the consent of that State. See EXPATRIATION.

Down to the enactment of the Naturalization Act, 1844—the popular title of the statute 7 & 8 Vict. c. 66—an alien could become a British subject only by force of a special Act of Parliament. Under the Act of 1844 (and subsequently under the Naturalization Act, 1870, which repealed and replaced the earlier Act) an alien could become a British subject upon receiving from a Secretary of State a certificate of naturalization; and since 1844 naturalization by special Act has occurred in only a few cases.

The Act of 1870 was in its turn repealed by the British Nationality and Status of Aliens Act, 1914, which, as amended by the British Nationality and Status of Aliens Act, 1918, now governs naturalization. The sections bearing on it are ss. 2-9 of the Act of 1914; and the amendments of those sections which are made by the Act of 1918 are contained in s. 2 of the latter Act. The general rule is that a certificate of naturalization can be granted only to any applicant who (a) during the preceding eight years has for five years resided in His Majesty's dominions or been in His Majesty's service, (b) is of good character and knows English adequately and (c) intends to reside in His Majesty's dominions or to enter and continue in his service (Act of 1914, s. 2; Act of 1918, s. 2).

The main alterations made in the pre-existing law by the Acts of 1914 and 1918 are:—Naturalization makes an alien a British subject not merely *quoad* the United Kingdom but *quoad* the King's dominions generally; a certificate of naturalization, instead of being irrevocable, may be revoked in the state of

facts mentioned in the Act of 1918, s. 1; a certificate of naturalization may be granted, not only by the Secretary of State, but also by the Governments of Canada, Australia, New Zealand, and, with the approval of the Secretary, by the Government of any other British possession; and the revocation of a certificate is to be effected by the like authorities (Act of 1914, s. 8; Act of 1918, s. 2).

A procedure—analogous to but not precisely naturalization—under which a married woman can remain or become a British subject although her husband becomes or, in certain cases is, an alien is provided by s. 10 of the Act of 1914 as amended by s. 2 of the Act of 1918.

The term "naturalization" is also sometimes applied to that operation of law by which the children and, down to 1st January, 1915, the grand-children born abroad of English natural-born subjects are themselves natural-born subjects "to all intents, constructions and purposes." See ALLEGIANCE; BRITISH SUBJECT; DENIZEN; NATIONALITY.

Natural Persons. Human beings, as distinguished from artificial persons or corporations recognised by the law.

Natural Rights are those rights which supplement the direct rights of ownership (q.v.), by imposing duties on other persons. Thus every owner of land has *primâ facie* the right to prevent his neighbours from polluting the air passing over his land, and from disturbing, diminishing or polluting the water flowing through his land; he is also entitled to so much support from his neighbour's land as is necessary to keep his own land at its natural level. These are called natural rights, as opposed to acquired rights, such as easements, profits à prendre, franchises, etc. See the various titles: also ACCESS; AIR; NAVIGATION; SUPPORT; WATER.

Natura non facit saltum; ita nec lex (*Co. Litt.* 238). (Nature takes no leap; neither does law.) Coke is pointing out that various preliminary steps to a writ of entry sur disseisin must be taken.

Natura non facit vacuum, nec lex supervacuum (*Co. Litt.* 79). (Nature does nothing useless and the law does nothing superfluous.)

Naval Courts are held abroad in certain cases to inquire into complaints by the master or officers or seamen of a British ship, or as to the wreck or abandonment of a British ship, or when it is required in the interests of the owners of the ship or cargo (Merchant Shipping Act, 1894, s. 480). A Naval Court consists of three, four or five members, being officers in His Majesty's Navy, consular officers, masters of British merchant ships or British merchants (s. 481). It has power to supersede the master of the ship with reference to which the inquiry is held, to discharge any of the seamen, to decide questions as to wages, and send home offenders for trial or try certain offences in a summary manner (s. 483). See the King's Regulations (for the Navy) 706. A naval court is quite distinct from a naval court-martial.

Naval Testament. A nuncupative or other informal will made, pursuant to s. 11 of the Wills Act, 1837, by a sailor at sea, whether he be in the service of the Crown or in the merchant service. See WILLS.

The right of the "lower deck" to make such wills has been much restricted by the Navy and Marines (Wills) Act, 1865, as amended by the Navy and Marines (Wills) Act, 1897, and the Navy and Marines (Wills) Act, 1914. These Acts (Act of 1865, s. 2) apply to members of His Majesty's Naval or Marine Forces, exclusive of commissioned, warrant, and subordinate (but not petty) officers, assistant engineers, and Kroomen. Kroomen are Liberian negroes.

Navigable; Navigation. The right of navigation is the right of the public to use an arm of the sea, a river, or other piece of water, as a highway for shipping, boating, etc., including the right to anchor in it. It is a right of way and not a right of property, and therefore the owner of the bed of a river over which the public have by user acquired a right of navigation may erect any structure on it which does not interfere with the navigation warranted by that user (see HIGHWAY). In the case, however, of estuaries and navigable tidal rivers, the beds of which are *primâ facie* vested in the Crown, the ownership of the soil is wholly subject to the public right of navigation, and no part of it can be used so as to derogate from or interfere with that right. A river which is subject to a right of navigation is said to be "navigable."

As to navigation on the sea, see HIGH SEAS.

The question whether a river is navigable or not seems to depend partly on its size and the formation of its bed, and partly on the use to which it has been put; if a river will admit ships and it has been used for shipping purposes by the public, it is a navigable river, whether it be tidal or non-tidal, and whether it flow through or over private land or land belonging to the Crown. As a rule, however, an arm of the sea or a tidal river with a broad and deep channel is deemed navigable.

Where the public have acquired the right of navigation on a private or non-tidal river, the original exclusive right of the riparian owners to fish in it is not thereby affected. (See FISHERY).

Obstructing the navigation of a navigable water is a public nuisance. (See NUISANCE).

Navigation Acts were various statutes (especially 12 Car. 2, c. 18) passed for the encouragement and protection of British shipping by excluding foreign ships from trading with British colonies and even with Great Britain. They have now been wholly repealed.

Navy. See ARTICLES OF WAR.

The Naval Discipline (Dominion Naval Forces) Act, 1911, provides for the application, with modifications, of the Naval Discipline Act, 1886 (see ARTICLES OF WAR), as amended, to the naval forces raised by Canada, Australia, New Zealand, or Newfoundland.

Navy Agency. See SHIP'S AGENT.

Navy Bills. These were bills of exchange which certain officers of the Navy were authorised to draw for their pay, etc., or which various naval authorities were authorised to draw in payment for stores, etc. No such bills are now in use. The Acts authorising them were repealed by the Admiralty, etc., Acts Repeal Act, 1865.

Ne admittas. While the old writ of *quare impedit* (q.v.) was available, a plaintiff who had sued out that writ could then sue out another writ, known as the writ of *ne admittas*, prohibiting the bishop from admitting, pending the decision of the case, the clerk whom the defendant had presented.

Ne baila pas. (He did not bail.) In detinue, this meant a plea by the defendant that the chattels in question had not been delivered to him by the plaintiff.

Necessaries. Notwithstanding the general rule that an infant is incapable of binding himself by a contract, he may make a contract for necessaries: and the word necessaries is not confined in its strict sense to such articles as are necessary to the support of life, but extends to articles fit to maintain the particular person in the state, degree, and station of life in which he is. See INFANT. The same doctrine applies to lunatics.

As a general rule, every wife has an implied authority to contract with tradesmen for necessaries suitable to the degree and estate of her husband, so as to make him liable to the tradesmen, unless he has sufficiently supplied her with articles of the kind in question, or unless she has a separate income. If the husband and wife are living together, this authority is implied, in the case of ordinary household necessaries, from the usual practice of persons in the particular class of life, according to which a wife has the management of such matters: if, therefore, the husband wishes to put an end to this authority, he must give notice to the tradesmen that it is withdrawn. But this principle does not apply to such things as dresses, jewellery, etc.; and, therefore, the husband need not give notice to the tradesmen that his wife has no authority to pledge his credit for such things, unless, by his previous conduct (as by habitually allowing his wife to purchase such things on credit and by paying for them), he has given her an implied authority to do so. Where, however, the husband turns the wife out of doors, or so conducts himself that she is obliged to leave him, he is under a legal duty to maintain her; and if he does not do so, she has power to provide for herself at his expense by pledging his credit for necessaries, such as food, apparel, lodging, etc. And as this authority is conferred on her by the law, and not by the husband, he cannot revoke or destroy it.

In the case of ships, the term "necessaries" means such things as are fit and proper for the service in which the ship is engaged, and such as the owner, being a prudent man, would have ordered if present; *e.g.*, anchors, rigging, repairs, victuals. The master may hypothecate the ship for necessaries supplied abroad so as to bind the owner.

In the criminal law, wilful neglect to provide necessaries for children or apprentices is a common law misdemeanour, and it is also an offence, as regards apprentices, under s. 6 of the Conspiracy and Protection of Property Act, 1875, and, as regards children not over the age of sixteen, under the Children Act, 1908, s. 12 (1); while under s. 3 of the Vagrancy Act, 1824, anyone who can maintain his family but fails so to do is punishable summarily as an idle and disorderly person. See VAGRANCY.

Necessitas est lex temporis et loci (*Hale P.C.* 54). (Necessity is the law when and where it exists.) But Hale quotes this maxim only to dissent. He says: "If a person being under necessity for want of victuals or clothes shall upon that account clandestinely and *animo furandi* steal another man's goods, it is felony." This is clearly

sound law, though Bacon (*Max.* 5) says otherwise. And so where starving sailors in an open boat kill and eat one of their number, they are in law always guilty of murder. Where a man is a free agent, necessity is never a justification for the doing of a criminal act, although it may justify the doing of an act which is merely a civil wrong.

Necessitas inducit privilegium quoad jura privata (*Bac. Max.* 25). (Necessity gives a privilege as to private rights.) Thus it is lawful for a shipmaster to jettison another man's goods in order to save the ship.

Necessitas non habet legem (*Plowd.* 18). (Necessity has no law.) This is true only as regards the doing of acts which are not criminal. See NECESSITAS EST.

Necessitas publica major est quam privata (*Bac. Max. Reg.* 5; *Noy Max.* 34). (Public necessity is greater than private.) "The law imposeth it on every subject that he prefer the urgent service of his Prince and country before the safety of his life." (*Bac. Max. Reg.* 5).

Neck Verse. The words *Miserere mei Deus*, with which the fifty-first Psalm begins. When a prisoner claimed benefit of clergy (q.v.) a paper on which these words were printed in black letter was handed to him. If he could either read them, or recite them as if he were able to read them, he was held to be able to read and to be entitled to benefit of clergy.

Nec tempus nec locus occurrit regi (*Jenk. Cent.* 190). (Neither time nor place affects the King.) In a decision that no grant of rights of criminal jurisdiction by the King could preclude him from prosecuting any pleas of the Crown in any place within the realm, this maxim is quoted only *quoad* the words *nec locus*. See NULLUM TEMPUS, ETC.

Nec veniam, effuso sanguine, casus habet (3 *Inst.* 57). (Where blood is spilled the case is unpardonable.) This is quoted only as fortifying the proposition that the unlawful throwing of a missile into a crowded street so that someone is killed constitutes murder though there was no intention to kill.

Ne disturba pas. In the old action of *quare impedit*, if the bishop and the clerk who had been presented pleaded *ne disturba pas*, the proceedings determined as against them. Now the bishop and the clerk usually disclaim title and leave the alleged owner of the advowson to fight the action.

The plea *ne disturba pas* in the old action of *quare impedit* was the general issue appropriate to that action. See ISSUE.

Ne dona pas or **Non dedit.** The form of general issue (see ISSUE) used in formedon (q.v.).

Ne exeat regno is a writ which issues from the High Court of Justice (in the Chancery Division) to restrain a person from going out of the kingdom without the King's licence or the leave of the Court. It is a high prerogative writ, which was originally applicable to purposes of State only, but was afterwards extended and confined to private transactions. It is or may be employed when a person, against whom another has an equitable claim for a sum of money actually due, is about to leave the country for the purpose of evading payment, and the absence of the defendant would materially prejudice the plaintiff in the prosecution of his action; but it would appear to be confined now to persons coming within s. 6 of the Debtors Act (q.v.).

Negatio conclusionis est error in lege (*Wing* 268). (The negation of a conclusion is error in law.) It is the premises upon which the conclusion is based that ought to be traversed.

Negatio destruit negationem, et ambo faciunt affirmativum (*Co. Litt.* 146). (A negative destroys a negative, and both make an affirmative.) Yet where the law ("that principally respecteth substance") considers that a negative was in fact intended, it will hold that there is really a negative, for *mala grammatica non vitiat cartam*" (q.v.).

Negative Pregnant, in pleading, is where a person gives an evasive answer to an allegation of his opponent by answering it literally, without answering the substance of it. Thus, if it is alleged that A received a certain sum of money, and he denies that particular amount, this is a negative pregnant, because the substance of the allegation is the receipt of some money, and not the particular amount received. A should, therefore, answer either that he did not receive any money at all, or state how much he received. Similarly, when something is alleged to have happened under certain circumstances, it is not sufficient to deny that it happened under those particular circumstances; but the party must state whether it happened at all. See Ord. 19, rr. 17-19.

Negilldare. To claim kindred: see Leg. Hen. 1, c. 70; Leg. Inæ. ss. 7, 8.

Negligence is want of proper care, and may consist in doing something which ought not to be done, or in not doing something which ought to be done. The legal effect of negligence is either civil or criminal.

I. In the civil law, negligence may operate

either to create or to defeat a right of action.

(1) Negligence which creates a right of action is a species of tort or injury giving rise to a right to damages, and may exist either (a) where the parties are strangers, or (b) where they stand in a special relation to one another. (a) To the first class belong those cases where one person by want of care in the use of his own property, or in the pursuit of his own private advantage or pleasure, causes injury to someone else; thus, a person who keeps his buildings in a bad state of repair, is liable for any injury caused thereby to a person having a right to be in or near them. So where a man's land is subject to an easement for the support of the buildings on his neighbour's land, and he excavates his land, so that the buildings are injured, he is liable to an action, no matter how carefully he may have done it; hence this kind of negligence (meaning the invasion of a *jus in rem*) is sometimes called negligence in law, to distinguish it from negligence in fact. (b) To the latter class belong those cases in which a person by entering into a contract with another puts himself under an obligation to exhibit a certain degree of care, and fails to do so, whether the obligation is created by the contract itself, or is imposed by law. It is with reference to these cases that the division of negligence into slight, ordinary, and gross, becomes important: thus, the general rule in the law of bailments (q.v.) is that when a bailment is made for the sole benefit of the bailee, he is liable for slight negligence; when it is made for the benefit of both, he is liable for ordinary negligence; and when it is made for the sole benefit of the bailor, the bailee is liable only for gross negligence. Slight negligence is the want of that care which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would presumably have exercised under the circumstances of the particular case, and ordinary negligence is the want of a greater degree of care. The term gross negligence is chiefly used to mean, not that the person accused of it has used less care than a reasonable man would have used, but that he has used less care than he himself would presumably have used if he had been acting in his own affairs, so that what would be gross negligence in a prudent man may not be so in a reckless one. Thus, if a man for his own convenience places goods for safe keeping without reward with a man who "is an idle, careless, drunken fellow, and comes home drunk, and leaves all his doors open, and by reason thereof the goods happen to be stolen and his own, yet," says Chief Justice Holt, "he [the bailee] shall not be charged, because it is the bailor's own folly to trust such an idle fellow." It is, however, also used to signify the want of that skill and care which persons exercising certain employments are bound to exhibit, even when they act gratuitously, as in the case of physicians, solicitors, etc.; it is, therefore, ordinary negligence committed by a gratitous agent or bailee; the term "gross" seems to have been applied to these cases in order not to disturb the symmetry of the rule that a gratuitous agent is only liable for gross negligence.

(2) Negligence operating to defeat a right of action is either (a) negligence amounting to estoppel (as to which see ESTOPPEL), or (b) contributory negligence, which occurs where the injury complained of has been caused partly by the negligence of the plaintiff and partly by that of the defendant: thus, if A and B are both driving negligently, and their carriages come into collision, so that A is injured, he cannot sue B if his own negligence contributed to the accident, that is, if he could by ordinary care have avoided the consequence of the other's negligence.

II. As to the effect of negligence in criminal law, see HOMICIDE.

See SCIENTER; ACT OF GOD.

See also ANIMALS, LIABILITY FOR.

Negligentia semper habet infortuniam comitem (*Co. Litt.* 246). (Negligence always has misfortune for a companion.)

Negotiable.—I. An instrument is said to be negotiable when any person who has acquired it in good faith and for value can enforce the contract or right of property of which it is evidence against the person originally liable on it, although the person from whom he acquired it may have had a defective title or none at all. In the first of these respects, negotiable instruments were always an exception to the rule that choses in actions are not assignable (a rule which can now be hardly said to exist); and, in the latter respect, they are an exception to the rule which denies to the transferee of property a title superior to that of the person from whom he receives it. Moreover, the benefit of the contract or other right is attached to the possession of the document, which, according to ordinary rules, would be only evidence of the right. Negotiable instruments are, therefore, altogether anomalous institutions. They exist primarily for the convenience of commerce.

Negotiability is either absolute or qualified.

When an instrument is transferable so as to give the transferee all the rights originally created by it without affecting him with any equities between prior holders, its negotiability is said to be absolute; an ordinary bill of exchange, promissory note or cheque is an instance. Thus, if A, being indebted to B, gives B a promissory note on the condition that it is to be regarded as a security only, and is not to be negotiated before a certain time, B may nevertheless transfer it to C for value; and if C has no notice of the arrangement between A and B, he may enforce payment of it against A. So if B steals a bill and transfers it to C for value, and without notice of the theft, C may enforce it against the parties liable on it, although B had in fact no title to transfer. When an instrument is transferable only to certain persons, or in a certain manner, or so as to make the transferee take it subject to equities affecting it in the hands of prior holders, while preserving the other incidents of negotiability, its negotiability is said to be qualified or restrained. Thus, in the first instance given above, if the promissory note were transferred after its due date, the transferee would take subject to the arrangement between A and B. See EQUITY; CHEQUE.

II. "Negotiable" is also used in a wide sense to denote an instrument transferable from one person to another by indorsement or delivery, but wanting in the essential of giving the transferee a good title notwithstanding any defect of title in his transferor. This quality is also called *quasi*-negotiability, to distinguish it from negotiability in the true sense. See DEBENTURE; EXCHEQUER BILLS; SCRIP.

Negotiate. To negotiate a bill of exchange, promissory note, cheque or other negotiable instrument for the payment of money is to transfer it for value by delivery or indorsement.

Negotiorum gestio. This, in the Roman law, meant the interference of one in the affairs of another merely from benevolence and without authority. In English law a man so interfering (1) has no claim on the other in respect of what he may do—"Liabilities," said Lord Bowen, "are not to be forced upon people behind their backs"; (2) is liable for the wages of anyone whom he may employ; (3) must have the skill and knowledge necessary for whatever he takes it on himself to do.

Neife is the technical name for a female villein. Originally, however, the word signified a villein of either sex, and "nayfté" meant the status of a villein. It is derived from the Latin *nativus*, there having been apparently at one time a distinction between villeins by birth and freemen who had become villeins, *e.g.*, by confession in a Court of Record. See CONFESSION: see also NATIVI DE STIPITE.

Neifty, Writ of. In the days of villeinage this writ lay for a lord who claimed a woman for his neife.

Ne injuste vexeris. A writ founded on Magna Charta, c. 10, which lay for a tenant distrained by his lord for more services than he ought to render. Jacob gives the form of writ used about 1749. It was one of the many writs abolished by the Real Property Limitation Act, 1833, s. 35.

Nem. con.; Nem. dis. Anything unanimously agreed to in the House of Commons is recorded as having been agreed to *nem. con*, that is to say, *nemine contradicente* (no one saying otherwise). In a like case in the House of Lords the term used is *nem. dis.*, that is to say, *nemine dissentiente* (without anyone dissenting).

Neminem oportet esse sapientiorem legibus (*Co. Litt.* 97). (No man ought to be wiser than the laws.) That is to say, no man ought to set himself up as being "wiser than the law which is the perfection of reason, . . . because by many successions of ages it hath been fined and refined by an infinite number of grave and learned men." The law is, of course, the common law.

Nemo admittendus est inhabilitare seipsum (*Jenk. Cent.* 40). (Nobody is to be permitted to incapacitate himself.) Quoted in connection with a decision that a man could not plead that his own deed had been executed while he was *non compos mentis*.

Nemo agit in seipsum (*Jenk. Cent.* 40). (No one takes proceedings against himself.) Thus an executor or administrator does not in his private capacity sue himself in his representative capacity for any debt which may have been due to him in his private capacity by the deceased; he simply exercises his right of retainer (q.v.). See IDEM AGENS, ETC.

Nemo aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegit (3 *Rep.* 59). (No one can properly understand a part until he has read the whole again and again.) "The function of a good expositor of an Act of Parliament is to make construction on all the parts together and not of one part only by itself" (*ib.*).

Nemo cogitur rem suam vendere, etiam justo pretio (4 *Inst.* 275). (No one is compelled to sell his property, even for the full value.) Compare ID QUOD NOSTRUM, ETC.

Nemo contra factum suum proprium venire potest (2 *Inst.* 66). (No one can come against his own deed.) This is the well-known doctrine that no grantor can derogate from his own grant.

Nemo dat qui non habet (Quoted in this form by Willes, J., at 14 C. B. N. S. 257; given in a slightly different form at *Jenk. Cent.* 250). (No one gives who possesses not.) That is to say, the general rule is that no man can give another any better title than he himself has. This is the rule both as to realty, except where the Settled Land Acts or other enactments apply, and as to chattels, except (1) where the true owner is estopped by his conduct from denying the purported title of the vendor, (2) where under the Factors Act there is statutory authority for an apparent owner to sell, (3) where the sale is made under a statutory power, as by a pawnbroker, and (4) where the sale is in market overt.

Nemo debet bis puniri pro uno delicto (4 *Rep.* 43). (No one should be punished twice for one fault.) This is an invariable rule of our criminal law. And so a decision of a competent Court upon any given set of facts—so that the plea of *autrefois convict* or the plea of *autrefois acquit* is available—is a bar to any subsequent prosecution. But where a man is convicted of common assault and the injured person subsequently dies, a prosecution for manslaughter is not barred, because here there is an additional fact.

Nemo debet bis vexari, si constat curiæ quod sit pro unâ et eâdem causâ (5 *Rep.* 61). (No man ought to be twice vexed, if it be proved to the Court that it be for one and the same cause.) That is to say, no man should be twice sued or twice prosecuted upon one and the same set of facts, if there has been a final decision of a competent Court. As to prosecutions, see also the preceding title. See also INTEREST REIPUBLICÆ UT SIT, ETC.; RES JUDICATA, ETC.

Nemo debet esse judex in propriâ causâ (12 *Rep.* 113). (No one should be judge in his own cause.) Compare ALIQUIS, ETC.; NEMO POTEST ESSE, ETC.

Nemo de domo suâ extrahi debet (*D.* 50, 17, 103). (No one can be dragged out of his own house.) This is a maxim of the civil law; it never applied to this country. As to a man's house, see DOMUS SUA, ETC.

Nemo est hæres viventis (*Co. Litt.* 22). (No one is the heir of anyone who is alive.) See HEIR.

Nemo ex alterius incommodo debet locupletari (*Jenk. Cent.* 4, 8). (No man ought to be made rich out of another's injury.)

Nemo ex dolo suo proprio relevetur, aut auxilium capiat (*Jur Civ.*). (No one is relieved or aided by his own fraud.) Compare NULLUS COMMODUM, ETC.

Nemo ex próprio dolo consequitur actionem. (No one obtains a cause of action by his own fraud.) Compare FRAUS ET DOLUS, ETC.

Nemo ex suo delicto meliorem suam conditionem facere potest (*D.* 50, 17, 134, par. 1). (No one can improve his position by his own wrongdoing.) Our law also acts on this principle; and so where the existence of a cause of action is, by the fraud of the person who creates it, concealed from the person who could take advantage of it, then the Statute of Limitations will begin to run only as from the date of the discovery of the fraud (see 9 Q. B. D., at p. 65). Compare FRAUS ET DOLUS, ETC.

Nemo militans Deo implicetur secularibus negotiis (*Co Litt.* 70). (No man warring for God should be associated with secular business.) Quoted in connection with the rule that one holding of the king in escuage should not himself render military service, but should send a substitute.

Nemo nascitur artifex (*Co. Litt.* 97). (No one is born a skilled workman.) Quoted in connection with the observation that knowledge of the common law was to be acquired only by "long study, observation, and experience."

Nemo patriam in quâ natus est exuere nec ligeantiæ debitum ejurare possit (*Co. Litt.* 129). (A man cannot abjure his native country, nor the allegiance he owes his Sovereign.) This is no longer the case. See ALIENAGE; NATURALIZATION.

Nemo potest contra recordum verificare per patriam (2 *Inst.* 380). (No man can take the verdict of a jury as to the correctness of any decision.) Quoted by Coke along with JUDICIUM SEMPER PRO, ETC.

Nemo potest esse simul actor et judex. (No one can be at once suitor and judge.) "A man cannot sue either before himself or his deputy" (*per* Holt C.J., at 1 *Salk*, 398). See NEMO DEBET ESSE, ETC; NEMO SIBI ESSE, ETC.

Nemo potest esse tenens et dominus (*Gilb. Ten.* 142). (No man can be tenant and lord.) Cited in connection with the rule that if an

eldest brother had enfeoffed the second brother and received homage, and if the second brother had died without issue, then the land descended to the youngest brother and not to the eldest.

Nemo potest facere per alium, quod per se non potest (*Jenk.* 237). (No one can do through another what he cannot do himself.)

Nemo potest mutare consilium suum in alterius injuriam (*D.* 50, 17, 75). (No one can change his counsel to the injury of another.) This was applied by the Roman lawyers as meaning that legislation should not be retrospective.

Nemo potest plus juris ad alium transferre quam ipse habet (*Co. Litt.* 309). (No one can transfer a greater right to another than he himself has.) See NEMO DAT, ETC.

Nemo præsumitur alienam posteritatem suæ prætulisse (*Wing.* 285). (No one is presumed to have preferred another's posterity to his own.) Quoted in connection with a doctrine of the old law as to warranty of land. It has no application now.

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis (6 *Rep.* 76). (No one is presumed to be forgetful of his own eternal welfare, and more particularly in the moment of death.) Quoted, not in connection with the admissibility of dying declarations, to which it would naturally seem to apply, but as showing that fraud is not to be imputed to a testator in connection with his will.

Nemo prohibetur pluribus defensionibus uti (*Co. Litt.* 304). (No one is forbidden to use several defences.) This is still true. As Thesiger, L.J., says at 3 *Ex.* 255, a defendant "may raise . . . as many distinct and separate . . . defences as he thinks proper": but see Ord. 19, r. 27.

Nemo punitur pro alieno delicto (*Wing.* 336). (No one is punished for the fault of another.) Quoted in connection only with the doing of civil wrongs.

Nemo punitur sine injuriâ, facto, seu defaltâ (2 *Inst.* 287). (No one is punished unless for some injury, deed, or default.) Quoted as being to the same effect as ACTUS LEGIS NEMINI FACIT INJURIAM.

Nemo sibi esse judex vel suis jus dicere debet (*C.* 3, 5, 1). (No one ought to be his own judge, or to decide matters in which he is interested.) See NEMO DEBET ESSE JUDEX, ETC.

Nemo tenetur ad impossibile (*Jenk. Cent.* 7). (No one is required to do what is impossible.) Compare IMPOTENTIA, ETC.; LEX NON COGIT, ETC.

Nemo tenetur armare adversarium contra se (*Wing.* 665). (No one is bound to arm his adversary against himself.) Wingate applies the maxim to obsolete law as to replevin and the challenging of jurors.

Nemo tenetur divinare (4 *Rep.* 28). (No one is bound to be a prophet.) Compare EA QUAE RARO, ETC.

Nemo tenetur seipsum accusare (*Wing. Max.* 486). (No one is bound to incriminate himself.) That is to say, to give any evidence which in the opinion of the Court will expose him to any penalty or forfeiture reasonably likely to be sued for, or to any penalty.

Nephews and Nieces. These words mean primarily the children of a brother or sister, but will be held to include a grandnephew or grandniece or the children of the brother or sister of a husband or wife when the context of a will or other instrument so indicates.

Ne recipiatur. A notice against receiving and setting down an action for trial which the defendant might formerly enter when the action had not been entered in due time.

Ne rector prosternat arbores in cemiterio. (That the rector do not cut down trees in the churchyard.) An enactment printed under these titles in the *Statutes of the Realm* (vol. 1, p. 221), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as 35 Edw. 1, st. 2.

Ne relessa pas. (He did not release.) It was the technical name of a replication (q.v.) filed in reply to an answer (q.v.) in which the defendant alleged that the plaintiff had released.

Nether House. Used during the sixteenth and seventeenth centuries as meaning the House of Commons.

Ne unques. Law-Latin for "never."

Ne unques accouplè. Formerly this was the technical name of a plea in which the fact of marriage was denied.

Ne unques executor. (Never an executor.) This was the old term for a pleading which declares that "the defendant [or plaintiff] is not and never was executor [or administrator] as alleged," or other words to the like effect.

Ne unques indebitatus. Another form of *nunquam indebitatus*, as to which see NIL DEBET.

Ne unques seisie que dower. Formerly this was the name of a plea by which a defendant denied that the husband of a widow was at or after her marriage seised of such an estate in lands as to entitle her to dower.

Ne unques son receiver. In an action for an account this was formerly the plea by which a defendant denied that he had ever received anything for the plaintiff.

Neutrality. See FOREIGN ENLISTMENT ACT.

Ne varietur. (Let it not be changed.) These words are sometimes written by foreign notaries and translators on copies or translations of documents furnished by them.

Never Indebted. See NUNQUAM INDEBITATUS.

New Assignment. Under the common law practice before the Judicature Acts, where the declaration in an action was ambiguous and the defendant pleaded facts which were literally an answer to it, but not to the real claim set up by the plaintiff, the plaintiff's course was to reply by way of new assignment, that is, to allege that he brought his action not for the cause supposed by the defendant, but for some other cause to which the plea had no application. Under the present practice, a plaintiff in such a case would amend his statement of claim See AMENDMENT.

New Forest. A royal forest in Hampshire which has existed as such since the time of the Conqueror. It contains about 92,000 acres, of which about 63,000 acres are strictly speaking forest; 2,000 belong to the Crown, and 27,000 acres belong to private persons. Some parts of the 27,000 acres are subject to certain forest rights of the Crown.

Newgate. The New Gate of the City of London, which was built in the reign of Henry I., was used as a prison from at any rate 1188. It was rebuilt as a prison about 1420. In 1780 it was destroyed by the Gordon rioters. In 1783 it was rebuilt; and it was used both for criminals and debtors until 1815, after which year only criminals were confined in it. In 1881 it ceased to be used as a prison except during the actual sittings of the Central Criminal Court. In 1902 it was pulled down.

New Inn. See INNS OF CHANCERY.

New Parishes Acts. These are the New Parishes Acts, 1843 to 1884. They were passed "to make better provision for the spiritual care of populous parishes." See BLANDFORD'S ACT; ECCLESIASTICAL COMMISSIONERS; PEEL'S ACT.

Newspapers. The Newspaper Libel and Registration Act, 1881, provides for (s. 8) the establishment of a register of proprietors of newspapers, and for (s. 9) annual returns being made by the printers and proprietors of every newspaper, giving particulars of its title and its proprietors. The returns are entered in the register, which is open to public inspection (s. 13). A newspaper is anything within the popular meaning of that word which is published in England or Ireland at intervals not exceeding twenty-six days (s. 1).

The Law of Libel Amendment Act, 1888, s. 3, enacts that newspaper reports of proceedings in any Court are privileged unless they contain blasphemous or indecent matter. By the same Act (s. 4), any report published in a newspaper of the proceedings of a public body to whose meetings the public or reporters are admitted, or of a public meeting, is privileged (that is, not libellous), if such report was fair and accurate, and was published without malice and is not blasphemous or indecent, but this protection is not available as a defence to any proceeding, if the defendant refused to insert in his newspaper a reasonable explanation or contradiction by the plaintiff No criminal prosecution for a libel contained in a newspaper can be commenced without the leave of a judge in chambers (s. 8). Charges of libels contained in newspapers may be tried summarily (Act of 1881, ss. 4, 5).

See APOLOGY; PRESS; PRINTER

New Style. See Calendar.

New Trial. See TRIAL.

New Year's Day. From the seventh to the twelfth century, the year began on Christmas Day; from the twelfth century as regards the church, and from the fourteenth century as regards the law, it began on the 25th March; and under the Calendar Act, 1751 (see CALENDAR), it began on 1st January. Under the Bank Holidays Act, 1871, New Year's Day is a Bank Holiday (q.v.) in Scotland, but not elsewhere.

New Zealand Company. See COMPANIES, CHARTERED.

Next Friend. An infant who desires to bring an action must, as a rule, do so through the intervention of a person called a next friend, generally a relation (Ord. 16, r. 16) Before the Married Women's Property Act, 1882, came into operation, the same rule applied where a married woman sued without her husband, and it still applies (see Ord. 16 r. 17), where an action is to be brought by a person of unsound mind who has no committee or has a committee whose interest is adverse to his own. Every next friend is responsible for the propriety of the proceedings taken in his name. (See GUARDIAN.)

A married woman cannot be either a next friend or a guardian *ad litem*.

Next of Kin.—I. In the strict sense of the term, the next of kin of a deceased person are those who are next in degree of kindred to

him, that is, are most closely related to him in the same degree. The degrees of kindred are reckoned according to the Roman law, both upwards to the ancestor and downwards to the issue, each generation counting for a degree. Thus, from father to son is one degree, from grandfather to grandson or *vice versâ* is two degrees, and from brother to brother is two degrees, namely, one upwards to the father and one downwards to the other son: so from uncle to nephew, or *vice versâ*, is three degrees. In tracing the degrees of kindred in the distribution of an intestate's personal estate (*infra*), no preference is given to males over females, nor to the paternal over the maternal line, nor to the whole over the half blood, nor do the issue of a deceased person stand in his place, as in the case of descent of real estate. See DESCENT.

II. More commonly, the "next of kin" of a person who has died intestate signifies those persons who are entitled to his personal property, after payment of his debts, under the Statutes of Distribution (22 & 23 Car. 2, c. 10; 1 Jac. 2, c. 17, s. 7; see DISTRIBUTION). If the intestate leaves a widow and any child or children or descendant of any child, the widow takes the first £500 and, as regards anything over that amount, she takes a third and the issue take two-thirds *per stirpes* (q.v.), subject to the rule as to advancement (q.v.). If he leaves no widow, his issue take the whole in the same manner. If he leaves a widow but no issue, the widow takes the first £500, and as regards anything over that amount, she takes a half, and the other half, or if there is no widow, the whole, goes as follows: first to the father, if living; then to the mother, brothers and sisters, or such of them as shall be living, in equal shares, the children of any deceased brother or sister standing in their parent's place, provided the mother or any brother or sister of the deceased is living; and if there is neither mother, brother nor sister living, then to those who are next of kindred to the deceased in the same degree (*supra*). The husband of a woman dying intestate takes the whole of her personal property.

When a testator gives his property to the "next of kin" of himself or another, the expression is construed to mean "next of kin" in the strict sense of the word (*supra*); and, therefore, does not include persons claiming by representation (*e.g.*, children of a deceased brother), unless there is an express or implied reference to the Statutes of Distribution. Even then "next of kin" does not include the husband or wife of the deceased.

Next Presentation. In the law of advowsons (q.v.) the right of next presentation is the right to present to the first vacancy of a benefice. When an advowson is sold during an existing incumbency, the right of next presentation passes to the grantee, unless the owner has already sold it to someone else, which he might do down to 1st January, 1899, as from which date, under the Benefices Act, 1898, s. 1, no dealing with the right of presentation separately from the advowson can take place. But when a vacancy had actually occurred, the right of presenting to it was always considered to be of such a personal nature that it could not be sold, and if, therefore, the owner sold the advowson at such a time, the next presentation did not pass to the grantee. If the owner of the advowson died intestate during a vacancy, the next presentation formerly went to his executor, while the advowson went to his heir. Now, since 1897, both pass to the executor (q.v.).

A next presentation, when held separately from the advowson, is personal estate, but the cases in which it is so held are now rare.

See SIMONY; AVOIDANCE.

Nient comprise. Formerly this was an exception (q.v.) taken to a petition (q.v.) on the ground that the matter prayed for therein was outside the deed or proceeding upon which the petition was founded. Thus, where one petitioned to be put into possession of certain lands whereof a recovery had been had, it was open to the defendant to take the exception that they were not included (*nient comprise*) in the lands to which the judgment related.

Nient culpable. An ancient form of the plea of not guilty in criminal cases. It was in use so late as the eighteenth century. The customary abbreviation in the Court records was *nient cul.* See NON CULPABILIS.

Nient dedire. In the old common law practice, when a suggestion (q.v.) was entered on the record in an action, and the opposite party did not wish to deny it, he made an entry on the record to that effect, which operated as a confession of the truth of the suggestion, and was called a *nient dedire* (Norman-French, = "not deny").

Nient le fait. Formerly this was a plea which denied that an alleged deed had been duly signed, sealed and delivered. Also used to deny that a bond was the valid bond of the defendant.

Niger liber. (The Black Book of the Exchequer.) See that title.

Night. See DAY. The Night Poaching Act, 1828, s. 12, provides that for the purposes of that Act night commences one hour after sunset and ends one hour before sunrise. This means local sunset and sunrise.

Nightline. A line fastened at one end to a peg on the banks of a river or lake, and with a weight at the other end, the intermediate line carrying baited hooks. The weighted end is thrown overnight into the water and is drawn in next day with such fish, if any, as may have been hooked. The use of nightlines is not "angling" for the purposes of s. 25 of the Larceny Act, 1861.

Nightwalker. Used in the Metropolitan Police Act, 1839, s. 4, and in the Town Police Clauses Act, 1847, s. 28, as a synonym for common prostitute. Originally it meant anyone who prowled about at night.

Nihil; Nil. An endorsement by a sheriff upon a writ; it signifies that the defendant has no goods upon which the sheriff can levy, or none of any value; and it is more particularly appropriate to the writ of *elegit* (q.v.). See CLERK OF THE NIHILS; compare TOT.

Nihil aliud potest rex in terris, cum sit Dei minister et vicarius, quam quod de jure potest (11 *Rep.* 74). (The King, since he is the Minister and Vicar of God, is incapable of doing anything in the world except what he is of right empowered to do.) This is a quotation from Bracton which Coke, apparently with an eye on King James, introduces into the judgment in the *Magdalen College Case*. Compare REX NON POTEST PECCARE.

Nihil capiat per breve (or billam). This, says Coke, "is the judgment given against the plaintiff in an action either in bar of his action or in abatement of his writ or bill." It meant literally "Let him take nothing by his writ [or bill]."

Nihil consensui tam contrarium est quam vis et metus (*D.* 50, 17, 116). (Nothing is so opposed to consent as force and fear.) That is to say, there is no consent when an act is done under duress (q.v.).

Nihil dat qui non habet (*Jur. Civ.*). (He gives nothing who has nothing.) That is to say, a gift of anything by one other than the owner is a nullity. Compare NEMO DAT, ETC.

Nihil dicit. (He says nothing.) Formerly this was the judgment which a plaintiff had against a defendant who failed to put in an answer to the plaintiff's plea by the day assigned. See DEFAULT.

Nihil facit error nominis cum de corpore constat (11 *Rep.* 21). (A mistake as to the name has no effect when there is no mistake as to who is the person meant.) The maxim is cited by Coke as explaining the decision that "a grant made to the King by the title of Sovereign Lord James, omitting the word 'King,' is good." Compare FALSA DEMONSTRATIO, ETC.

Nihil infra regnum subditos magis conservat in tranquillitate et concordiâ quam debita legum administratio (2 *Inst.* 158). (Nothing more preserves in tranquillity and concord those subject to the royal authority than a due administration of the laws.)

Nihil in lege intolerabilius est, eandem rem diverso jure censeri (4 *Rep.* 93). (Nothing in law is more intolerable than that like cases should be decided upon different constructions of the law.) Compare LEX UNO, ETC.

Nihil præscribitur nisi quod possidetur (1 *B. & A.* 277). (No right can be acquired by prescription except in respect of what is owned [by anyone other than the king or a grantee of the king].) The maxim is cited from the Roman law by Hale at p. 32 of his *De jure Maris*, and again by Best, J. *ub supra*, in his judgment to the effect that the public have no common law right of bathing in the sea and, as incident thereto, of crossing the seashore for that purpose. See FORESHORE.

Nihil quod est contra rationem est licitum (*Co. Litt.* 97). (Nothing is lawful which is contrary to reason), "because," as Coke goes on, "reason is the life of the law."

Nihil quod inconveniens est licitum est (*Co. Litt.* 97). (Nothing which is inconvenient is lawful.) But Coke really quotes this maxim only as meaning that "an argument drawn from inconvenience is forcible in law." For although he says "the law cannot suffer anything that is inconvenient," yet he continues, "it is better to suffer an inconvenience which is peculiar to one than an inconvenience that may prejudice many." See NECESSITAS PUBLICA, ETC.

Nihil simul inventum est et perfectum (*Co Litt.* 230) (Nothing is invented and perfected at the same moment.) Coke quotes this as illustrating the gradual development of the forms used in conveyancing: at 4 C. B. N. S. 290 it is quoted in connection with a patent.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est (2 *Inst.* 359). (Nothing is so much in agreement with natural justice as that everything should be loosed by the same

means that bound it.) This is practically the same as NATURALE EST, ETC. (q.v.).

Nihil tam conveniens est naturali æquitati, quam voluntatem domini volentis rem suam in alium transferre, ratam habere (1 *Co.* 100). (Nothing is so consonant to natural justice as to give effect to the intentions of an owner who desires to transfer his property to another.) This is a quotation from Bracton which is cited in the argument for the defendant in *Shelley's Case*.

Nihil tam proprium est imperii quam legibus vivere (2 *Inst.* 63). (Nothing is so characteristic of the royal power as the fact that it is exercised in accordance with the laws.)

Nihil temere novandum (*Jenk. Cent.* 167). (Rash innovations should be avoided.) Compare NOVITAS, ETC.

Nil debet. (He owes nothing.) Down to 1834 this was the plea of the general issue (q.v.) in actions of debt not founded on specialty. By rules made in that year the plea of *nil debet* was abolished, and it was provided that the defendant in actions of debt on simple contract, other than actions on promissory notes or bills of exchange, should plead "that he never was indebted in manner and form as in the declaration alleged." This plea was known as *nunquam indebitatus*. But the rules of 1834 were made under the authority of the statute 2 & 3 Will. 4, c. 42, which expressly provided (s. 1) that no rule made thereunder should deprive anyone of the power of pleading the general issue by statute, that is to say, where the power had been expressly given by statute. This of course limited the operation of the rules of 1834. In 1853, however, by rules made under the authority of the Common Law Procedure Act, 1852 (which contained no section analogous to s. 1 of the Act of Will. IV.), it was provided that the plea of *nil debet* should not be allowed in any action, and the plea (also known as *nunquam indebitatus*) that the defendant "never was indebted as alleged" was substituted not only for that prescribed by the rules of 1834 but also for the plea of *non assumpsit* in certain cases; and it was provided also that the new plea, when used instead of the *non assumpsit* plea, should operate as a denial of the matters of fact from which the liability of the defendant was alleged to arise. In 1883, Ord. 21, r. 1, provided that, in an action for a debt or liquidated demand, a mere denial of the debt was inadmissible; and Ord. 19, r. 17, provides that no defendant can deny generally, and that he must deal specifically with every allegation of fact—except as regards damages—which he does not admit. *Nunquam indebitatus* is consequently abolished.

Nil habuit in tenementis. (He had no interest in the tenements.) This was a plea to be pleaded only in an action of debt, which was brought by a lessor against a lessee for years or at will without deed; it put the plaintiff on strict proof of his title.

Nimia subtilitas in jure reprobatur (4 *Rep.* 5). (Over-great subtlety in the law is condemned.) Compare SIMPLICITAS, ETC., which Coke links with this maxim.

Nimium altercando veritas amittitur (*Hob.* 344). (If you argue overmuch the true view is lost.)

Nisi. A decree, order, rule, declaration, or other adjudication of a Court is said to be made *nisi* when it is not to take effect unless the person affected by it fails to show cause against it within a certain time, that is, unless he appears before the Court, and gives some reason why it should not take effect. See ABSOLUTE; DECREE; RULE.

Orders (or rules) *nisi* were much used in the common law Courts before the Judicature Acts, but their number was much reduced by Ord. 52, r. 2. See ORDER.

Nisi prius. In the practice of the High Court, a trial at *nisi prius* is where an action is tried by a jury before a single judge, either at the sittings held for that purpose in London and Middlesex, or at the assizes (q.v.). Formerly all common law actions were tried at bar, that is, before the full Court, consisting of several judges; and, therefore, the writ for summoning the jury commanded the sheriff to bring the jurors from the county where the cause of action arose to the Court at Westminster. But when the statute 13 Edw. 1. directed the justices of assize to try issues in the county where they arose, the sheriff was thenceforth commanded to bring the jurors to Westminster on a certain day, "unless before that day" (*nisi prius*) the justices of assize came into the county. See BAR; BANC; TRIAL.

A Chancery action which is to be tried by a jury must be tried at *nisi prius*, and not before a judge sitting in the Chancery Division.

See RECORD.

Nobiliores et benigniores presumptiones in dubiis sunt præferendæ (*Reg. Jur. Civ.*). In cases of doubt, the more generous and more favourable presumptions are to be preferred.

Noble. See GOLD COINS.

Noctanter. (By night.) Under so much

of the Statute of Westminster I. (13 Edw. 1, st. 1, c. 46), as provided that where a hedge or ditch was overthrown the neighbouring vills (q.v.) should be liable for damages if they did not indict the offenders, a writ known as *noctanter* (issuing out of Chancery and returnable to the King's Bench) lay to the sheriff, and was the first step in the proceedings for the recovery of damages. The above-mentioned provision was repealed by the statute 7 & 8 Geo. 4, c. 27; and this put an end to the issue of the writ.

Formerly an indictment for burglary was defective unless it set out that the act charged had been done *noctanter*.

Nolle prosequi, in the practice of the King's Bench Division of the High Court, was an acknowledgment or undertaking entered on record by the plaintiff in an action, to forbear to proceed in the action, either wholly or partially: it has been superseded by the modern practice of discontinuance. In criminal prosecutions by indictment or information, a *nolle prosequi* to stay proceedings may be entered by leave of the Attorney-General at any time before judgment: it is not equivalent to an acquittal and is no bar to a new indictment for the same offence.

Nolumus leges Angliæ mutari. (We decline to have the laws of English changed.) See MERTON, STATUTE OF.

Nomen collectivum. (A collective name), that is to say, a designation covering persons of a particular class (such as the word "children") or indicating one of a particular class (such as the words "eldest male issue": see [1922] 1 *I. R.* 54). Compare PERSONA DESIGNATA.

Nominal. See DAMAGES.

Nomina sunt mutabilia, res autem immobiles (6 *Co.* 66). (Names can be changed but things remain the same.) Compare "A rose by any other name would smell as sweet."

Nominating and Reducing was in London and Middlesex a mode of obtaining a panel (q.v.) of special jurors, from which to select the jury to try a particular action. The proceeding took place before the under-sheriff or secondary, and in the presence of the parties' solicitors. Numbers denoting the persons on the sheriff's list were put into a box and drawn until forty-eight unchallenged persons had been nominated. Each party struck off twelve, and the remaining twenty-four were returned as the panel (q.v.).

The Juries Act, 1870, s. 17, provided that this course should be adopted only by order of the Court or a judge; but that section has been repealed by the Juries Act, 1922, which provides (s. 5 (1)) that a special jury shall be balloted for and called in the same manner as a common jury, except that there is to be no alteration in the method of striking a special jury for the purposes of the Lands Clauses Consolidation Act, 1845, which (ss. 54, 55) provides for the employment of the practice of nominating and reducing.

Nomination. A member, not being under the age of sixteen, of a friendly society, or of an industrial or provident society, may by writing under his hand, delivered at or sent to the registered office of the society, nominate any person to whom his share or interest in the society is to belong at his death. Such a nomination may be revoked or varied by the nominator, and must not dispose of a share or interest exceeding £100 (Friendly Societies Act, 1896, s. 56; Industrial and Provident Societies Act, 1893, s. 25). In the case of a friendly society it is revoked by marriage (Act of 1896, s. 56). It is in the nature of a testamentary disposition, and seems to be allowed in this form because members of the working classes do not generally leave wills.

In ecclesiastical law, the owner of an advowson may grant the right of nomination to another, and then the grantor is bound to present for institution any clerk whom the grantee shall name. (See PRESENTATION.) No Roman Catholic can nominate (Presentation of Benefices Act, 1713, s. 1).

As regards parliamentary, municipal and local government elections, nomination is the written proposal of a person as a candidate for a vacancy. Such nominations are the subject of various statutory provisions.

Nomina villarum. (The names of the vills.) The title of the various lists of vills, that is to say of townships, towns or villages, which from time to time were compiled for public purposes. The title is more particularly applied to the lists which all the sheriffs furnished in 1316 of the vills in their respective counties and of the owners of the vills. The original lists for nine of the southern counties are still preserved. A transcript of all the lists was made out by order of Henry VII. and copies of this still exist. The lists had been made out for the purpose of enabling Edward II. to raise one man from each vill in accordance with the authorisation of the Parliament of Lincoln.

The name is also applied to the lists contained in the Testa de Nevill (q.v.), and to reports made out in the reign of Charles II. by the bailiffs of the liberties of various towns

as to the claims of the lords thereof to estreats, etc.

Nomine pœnæ. (Under the description of a penalty.) Additional rent—known as a penal rent—payable to the landlord under a covenant in a lease which is to become operative in the event of non-performance of conditions in the lease, was formerly said to be payable *nomine pœnæ*. Formerly it might be made payable in all leases in, for instance, the event of non-payment of rent on the appointed days. But now the Agricultural Holdings Act, 1908, s. 25, precludes the landlord of an agricultural holding from recovering as penal rent any greater sum than is sufficient to cover the actual loss sustained by reason of breach of the condition unless the condition be against the breaking up of permanent pasture, the grubbing of underwoods, injuries to trees or one regulating the burning of heather.

Non acceptavit. (He did not accept.) Before the Judicature Acts this was the name of the plea, in an action of *assumpsit* against an alleged acceptor of a bill of exchange, by which the acceptance of the bill was denied.

Non-access, in the law of husband and wife, is the absence of access (q.v.). If non-access for above nine months is proved, by showing that the husband and wife were separated from one another, any children of the wife conceived during and born after that period are bastards unless the Court can be induced to adopt a large view of the period of gestation.

Non accipi debent verba in demonstrationem falsam quæ competunt in limitationem veram (*Bac. Max. Reg.* 13). (Words capable of being read as amounting to a limitation which was obviously intended are not to be read in a sense which makes them a false description.) Thus, where the parish of Hurst lies both in Wilts and Berks, and in the Berkshire part I own the lands of Callis, they will pass under a devise of the lands of "Callis situate in the parish of Hurst in the county of Wiltshire," because the words "in the county of Wiltshire" can and should be taken as referring to "the parish of Hurst" and not to Callis.

Nonæ et decimæ. Tenants of church lands anciently paid *nonæ*, or rent, and also *decimæ*, or tithes.

Non-age. Minority. See INFANT.

Nonagium; Nonage. The ninth part of the moveables of a deceased which was anciently paid for pious uses to the clergy of his parish.

Non alio modo puniatur aliquis, quam secundum quod se habet condemnatio (3 *Inst.* 217). (A person may not be punished otherwise than in accordance with the sentence), and so, as Coke continues, *non licet felonem pro felonia decollari*. (It is unlawful that a felon should be decapitated for felony.)

Non aliter a significatione verborum recedi oportet quam cum manifestum est aliud sensisse testatorem (*D.* 32, 69). (There should be no departure from the ordinary meaning of words except in so far as it appears that the testator meant something different.) This is a well-known rule for the construction of wills.

Non-appearance. See DEFAULT.

Non assumpsit, in the old action of *assumpsit* (q.v.), was the name for the plea by which the defendant averred that "he did not promise" as alleged, and thus raised the general issue. (See ISSUE; NIL DEBET.)

Non assumpsit infra sex annos (he did not promise within six years) was the plea by which the Statute of Limitations was pleaded.

Non-business Days. See BUSINESS DAY.

Non cepit modo et forma. (He did not take in the manner and form [alleged].) This was the plea used by the defendant in the old action (q.v.) of replevin to plead the general issue.

Non-claim. At common law, the levying of a fine (q.v.) barred the right of all persons, whether parties, privies or strangers, unless they put in their claim within, at first, a year and a day. This was called being barred by non-claim. Alterations were afterwards made in the time allowed for claiming, but the subject is now of no practical importance, fines having been abolished since 1833.

There was also a non-claim in a writ of right.

Non compos mentis (not sound in mind) is properly a generic term, in which are included four species: — These are, says Coke, "1. *Ideota* [an idiot], which from his nativitie, by a perpetuall infirmitie, is *non compos mentis*. 2. Hee that by sicknesse, griefe, or other accident, wholly loseth his memory and understanding. 3. A lunatique that hath sometime his understanding and sometime not, *aliquando gaudet lucidis intervallis*, and therefore he is called *non compos mentis* so long as he hath not understanding. [4] Lastly, hee that by his owne vitious act for a time depriveth himselfe of his memorie and understanding, as he that is drunken. But that kind of *non compos mentis* shall give no privilege or benefit to him or to his heires." (See DRUNKENNESS; INSANITY; LUNACY.) But there are certain offences which cannot be committed without the *mens rea* or intent to commit the crime; and so therefore a man who kills another while in *delirium tremens*

cannot be convicted of murder or manslaughter. Compare NON SANÆ MEMORIÆ.

Non concessit. (He did not grant.) This was the plea by which formerly a stranger to a deed put in issue the title of the grantor in the deed and also the operation of the deed.

Nonconformist. In the wider sense this is anyone who is not in conformity with the Church of England; but it is more generally used as meaning Protestant Dissenters, as distinguished from persons such as Roman Catholics on the one hand or professed atheists on the other. See RECUSANT.

Non constat, ("it is not clear," "it does not follow," "there are no grounds for assuming.")

Non-contentious. See CONTENTIOUS.

Non culpabilis. A form of the plea of not guilty which was used in Blackstone's time in criminal cases. The usual abbreviation on the minutes of the Court was *non cul.* See NIENT CULPABLE.

Non damnificatus. In an action of debt upon a bond conditioned to hold the plaintiff harmless, this was the plea by which the defendant averred that the plaintiff had not in fact suffered damage.

Non debeo melioris conditionis esse, quam auctor meus, a quo jus in me transit (*D.* 50, 17, 175). (I ought not to be in a better position than my assignor, from whom the right passes to me.) See NEMO DAT, etc.

Non debet alteri per alterum iniqua conditio inferri (*D.* 50, 17, 74). An unjust condition ought not to be imposed upon one man by another.)

Non debet, cui plus licet, quod minus est non licere (*D.* 50, 17, 21). (It is lawful for a man to do a less thing if he is entitled to do a greater thing [which includes the less].) This is the equivalent in the civil law of our maxim *Cui licet,* etc. Compare MAJUS CONTINET, etc., and OMNE MAJUS, etc.

Non decimando, De. A prescription *de non decimando* is a claim to be exempt from tithes and to pay no compensation in lieu of them. Such a prescription can be set up only by spiritual persons or by corporations or persons claiming under them, and formerly it was necessary to prove that the land in question had been immemorially exempt from tithes. But by the Tithe Act, 1832, non-payment of tithes during a certain period (thirty years in some cases and sixty in others) is sufficient to establish a prescriptive exemption.

Non decipitur qui scit se decipi (5 *Rep.* 60). (He is not deceived who knows himself to be deceived.) Compare VOLENTI, etc.

Non definitur in jure quid sit conatus (6 *Rep.* 42.) (No definition of an attempt is given by the law.)

Non demisit. (He did not demise.) A plea available before the Judicature Acts to a defendant in an action of debt for rent when the plaintiff in his declaration did not aver that the demise was by indenture: it could not be used when the plaintiff declared an indenture. In replevin (q.v.) it was a plea in bar to an avowry for arrears of rent.

Non detinet. (He does not detain.) In the old action of detinue the defendant could use the plea of *non detinet* in order to plead that he did not detain the goods specified in the plaintiff's declaration; but if he did use the plea he was estopped from pleading that they were not the goods of the plaintiff.

Non differunt quæ concordant re, tametsi non in verbis iisdem (*Jenk. Cent.* 70). (Those things that agree in substance, though not in the same words, are not different from one another.)

Non distringendo, De. A writ to prevent distraint; it was formerly available in many cases.

None Effect. See VOID AND OF NONE EFFECT.

Non est arctius vinculum inter homines quam jusjurandum (*Jenk. Cent.* 126). (As between men there is nothing more binding than an oath.) Compare JURATO, etc.

Non est factum. The Law-Latin form of *nient le fait* (q.v.). See MODO ET FORMA.

Non est inventus. The return which a sheriff has to make upon a writ commanding him to arrest a person who is not within his bailiwick. See ATTACHMENT; CAPIAS; RETURN.

Non est recedendum a communi observantiâ (2 *Rep.* 74). (There should be no departure from common usage.) See A COMMUNI, etc.

Non est regula quin fallit (*Plow. Com.* 162). (There is no rule without exceptions.) Compare EXCEPTIO PROBAT, ETC.

Non-existing Grant. See LOST GRANT.

Non facias malum ut inde fiat bonum (11 *Rep.* 74). (You are not to do evil in order that good may come thereof.)

Nonfeasance is the neglect or failure of a person to do some act which he ought to do. The term is generally used to denote, not a breach of contract, but rather a failure to perform a duty towards the public whereby some individual sustains special damage, as where a highway authority permits a road to become worn into a dangerous hole. If they had purported to repair the hole and then

opened it to the public in a dangerous state, there would be a misfeasance (q.v.). Compare MALFEASANCE; TORT.

Non impedit clausula derogatoria quo minus ab eadem potestate res dissolvantur a qua constituuntur (*Bac. Max. Reg.* 19). (A derogatory clause does not prevent things from being destroyed by the same power which created them.)

If an Act of Parliament contain a clause, "that it shall not be lawful for the King by authority of Parliament during a space of seven years, to repeal this Act," such a clause, which is technically termed *clausula derogatoria*, is void; for one Parliament cannot by its ordinances bind another, and (Interpretation Act, 1889, s. 10) Parliament may alter, amend, or repeal, during any session even an Act which it has passed earlier in that session. Compare PERPETUA, etc.

Non implacitando aliquem de libero tenemento sine breve. An ancient writ stated by Jacob (1739) to have issued "to prohibit bailiffs, etc., from distraining or impleading any man touching his freehold without the King's writ."

Non infregit conventionem. (He committed no breach of covenant.) This was formerly a plea by the defendant in an action for breach of covenant.

Non in legendo sed in intelligendo leges consistunt (8 *Co.* 167). (The laws consist not in reading but in understanding)—which would appear to mean that understanding and not mere knowledge of the letter of the law is required of a lawyer.

Non-intromittant Clause. A clause in the charter of a borough which exempts the borough from the jurisdiction of the justices of the peace appointed for the county in which the borough is situated.

Non intromittendo, quando breve præcipe in capite sub dole impetratur. This writ, which ceased to be available when the Court of Wards and Liveries (q.v.) was abolished, issued to the justices of the King's Bench or Eyre commanding them not to give any benefit under the writ *præcipe in capite* to one who had obtained that writ under pretence of entitling the king to lands, and directing them to put such person to his writ of right.

Non-joinder is where a person who ought to be made party to an action is omitted. The general rule is that, in an action on a contract, all the parties to it who are entitled or liable jointly should be joined as plaintiffs and defendants, and that, in an action of tort, persons who have a joint interest ought to sue jointly for an injury to it: persons who have a separate interest, but sustain a joint injury, may sue either jointly or separately. Joint wrongdoers may be sued either jointly or separately. (See JOINT; MISJOINDER.)

Non-joinder is cured by making an application to the Court to add the necessary parties (Ord. 16, r. 11).

Non jus, sed seisina, facit stipitem (*Fleta*, 6, *c.* 14). (Not right, but seisin, makes the stock [of descent].) See SEISIN; SEISINA, ETC.

Non liquet. (It is not clear.) In the Roman law the *judices* or judges, instead of deciding a case, could, if the facts did not point to a definite conclusion, write N.L. (*Non liquet*) on their tablets and leave the case for decision at some future time. No similar finding has ever been open to an English jury: the nearest thing to it is the Scottish verdict "*not proven*," which, however, is a bar to any further trial.

Non merchandizanda victualia, De. A writ which in early times was directed to justices of assize directing them to enquire whether the magistrates of towns had dealt in victuals while in office and to punish those who had.

Non molestando, De. A writ which anciently lay for one molested notwithstanding that the writ of protection (q.v.) had issued to him.

Non observata forma infertur adnullatio actus (*Coke, De jure Reg. Eccl.* 4*a*. See 5 *Rep.* p. xx.) (Non-observance of the prescribed formalities involves the invalidity of the proceeding.) Quoted by Coke in connection with the deprivation of a clerk pursuant to the statute 1 Eliz. c. 2.

Non obstante. (Notwithstanding.) About the year 1250, the Crown began to issue licences to do such and such a thing *non obstante* any law to the contrary. At a later period, such licences were frequently given in order to enable corporations to hold lands in contravention of the Statutes of Mortmain (q.v.). This continued to be done, in spite of protests, until at last James II. resolved to dispense with the provisions of the Test Act. This led to the Revolution of 1688, after which the Bill of Rights enacted that any dispensation *non obstante* should be wholly void and without effect. See MORTMAIN.

Non obstante veredicto. (Notwithstanding the verdict.) Upon an application for a new trial, the Court of Appeal, if satisfied that the findings of the jury cannot stand and that it has all the necessary evidence before it, may

set aside the judgment of the Court below and enter judgment, notwithstanding the verdict for the party who was unsuccessful in the Court below (Ord. 40, r. 10; Ord. 58, r. 4).

Non officit affectus nisi sequatur effectus (1 *Rol. Rep.* 226). (The intention is not hurtful unless an effect follow.) This maxim requires qualification: see VOLUNTAS IN, ETC. Compare AFFECTUS PUNITUR, ETC.

Non omittas was a clause usually inserted in writs of execution, directing the sheriff "not to omit" to execute the writ by reason of any liberty, because there were many liberties or districts in which the sheriff had no power to execute process unless he had special authority. Such authority was given by this clause, the full form of which was "*non omittas propter libertatem*" (do not omit because of any liberty).

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest (*D.* 1, 3, 20). (A reason cannot be given for all the laws that have been established by our ancestors.) Compare QUI RATIONEM, ETC; CONTRA NEGANTEM, ETC.

Non plevin. Default in replevying (q.v.) land within due time.

Non ponendis in assisis et juratis. A writ which anciently issued to free a person from serving on assizes or as a juror.

Non possessori incumbit necessitas probandi possessiones ad se pertinere (*C.* 4, 19, 2). (A person in possession is not bound to prove that what he possesses belong to him.) This applies only as against a person other than the true owner. Compare IN PARI, ETC.; MELIOR EST CONDITIO, ETC.

Non potest adduci exceptio ejusdem rei cujus petitur dissolutio (*Bac. Max. Reg.* 2). When the validity of any matter is in question, then he who seeks to uphold it cannot plead it in bar of proceedings taken to upset it; for that would be a begging of the whole question.

Non potest probari quod probatum non relevat. (That cannot be proved, which, if proved, is immaterial.) This is an obvious truism. Although the maxim is given in Broom's list of maxims, its source does not appear: something very like it, but not verbally the same, is at 1 Exch. 91, 92.

Non potest rex gratiam facere cum injuriâ et damno aliorum (3 *Inst.* 236). (The king cannot confer a favour on one man to the injury and damage of others.) Thus no pardon can be granted in respect of a common nuisance which remains unabated.

Non procedendo ad captionem assisæm rege inconsulto. A writ anciently available to stop proceedings at an assize until the pleasure of the king was known.

Non pros. An abbreviation for *non prosequitur*, that is to say, "he does not follow up." Judgment *non pros.* was available for the defendant in an action when the plaintiff failed to take the proper steps within the prescribed time. The modern equivalents are an order (under Ord. 27, r. 12) of dismissal for want of prosecution, where the plaintiff fails to deliver his statement of claim, or an order of dismissal (under Ord. 36, r. 12) where the plaintiff does not serve notice of trial after the pleadings are closed.

Non-provided School. A voluntary (q.v.) school.

Non quod dictum est, sed quod factum est, in jure inspicitur (*Co. Litt.* 36). (Not what is said, but what is done, is regarded in law.) This is quoted in connection with the proposition that there can be valid delivery of a deed without any words spoken.

Non quod voluit testator, sed quod dixit in testamento inspicitur. (Not what the testator wished, but what he said, is considered in construing a will.) The maxim is cited in part by Rolfe, B., at 5 Exch. Rep. 194. At 14 M. & W. 701, Parke, B., observes that "difficulties have arisen from confounding the testator's *intention* with his *meaning*. *Intention* may mean what the testator intended to have done, whereas the only question in the construction of wills is on the *meaning of the words*."

Non refert an quis assensum suum præfert verbis, an rebus ipsis et factis (10 *Rep.* 52). (It matters not whether a man gives his assent by his words, or by his acts and deeds.) Compare INDEX, ETC. Speech shows what is in the mind—but so may other things.

Non refert quid notum sit judici, si notum non sit in formâ judicii (3 *Buls.* 115). (It matters not what is known to the Judge, if it be not known judicially.) This is the rule now, just as it was when Coke quoted this *dictum* three hundred years ago.

Non-residence, in ecclesiastical law, is where a spiritual person holding a benefice does not keep residence on it. It is in ordinary cases an offence, and is punishable by monition and sequestration of the benefice, by forfeiture of part of the income of the benefice, and by the compulsory appointment of a curate. Licences for non-residence may be granted by the bishop in certain cases. See the Pluralities Act, 1838, ss. 42-51.

Non-resident, as applied to a trading corporation, signifies that it has no place of

business in England. The question is of importance with reference to the liability of such a corporation to be sued in this country, and to the manner in which it should be served with process. (See JURISDICTION; DOMICILE.) It should be served not with the writ, but with a copy thereof. See Ord. 10, rr. 1, 6, 8.

Non residentia pro clericis regis. Anciently this was a writ enjoining a bishop not to molest, by reason of non-residence, a clerk who was absent in the service of the king.

Non Sane Memory (Non sanæ memoriæ). In the old system of pleading this was an exception (q.v.) whereby it was pleaded that the person who had done an act was "not of sound memory" when he did it. Compare NON COMPOS MENTIS.

Non solent quæ abundant vitiare scripturas (D. 50, 17, 94). (Surplusage does not vitiate writings.) For corresponding maxims of the English law, see SURPLASAGIUM, ETC; UTILE, ETC.

Non solvendo pecuniam ad quam clericus mulctatur pro non-residentia. Anciently this was a writ prohibiting the bishop from enforcing a fine imposed for non-residence upon a clerk who was absent on the king's service.

Nonsuit was where the plaintiff in an action abandoned his case at the trial before the jury had given their verdict, whereupon judgment of nonsuit was given against him. (See JUDGMENT.) Before 1875 the advantage of this practice (which was peculiar to the common law Courts) was that the plaintiff could bring another action against the defendant for the same cause of action; but under Ord. 41, r. 6, of the R. S. C. 1875, any judgment of nonsuit, unless the Court otherwise directed, had the same effect as a judgment on the merits, that is, it barred the plaintiff from bringing another action for the same cause; but in case of mistake, surprise or accident, a judgment of nonsuit might be set aside by the Court. Order 41, r. 6, was cancelled in 1883 and there is now in strictness no such thing as a nonsuit; but the term is still loosely used instead of the term "judgment for the defendant," where the judge withdraws the case from the jury and directs a verdict for the defendant.

See DISCONTINUANCE.

Non sum informatus. (I am not informed. That is to say, I have no instructions to defend.) Upon this being filed by the attorney appearing for a litigant, it formerly enabled the other party to have judgment. See now COGNOVIT; WARRANT OF ATTORNEY.

Non-summons. Failure to serve a summons. The statute 31 Eliz. c. 3, s. 2, provided that the process in a real action known as "summons upon the lands" should be 'proclaimed" upon the local church door fourteen days at the least before the day that the summons was returnable. If the provisions were not complied with the defendant (as appears from *Saund.* 45*c*) could "wage his law of non-summons."

Non tenuit. In the old action of replevin (q.v.) this was a plea in bar to an avowry for arrears of rent: it set out that the plaintiff did not hold in the manner and form alleged in the avowry.

Non-tenure. This was a plea in bar to the now abolished real action. The defendant denied by the plea that he had held the land in question, or denied that he had held some particular part of it.

Non term; non terminus. In the sixteenth century, and earlier, these expressions meant the period between one term (q.v.) and another. Any such period was also known as the time or days of the king's peace.

Non-user is where a person ceases to exercise a right. The term is principally used with reference to easements, profits *à prendre*, and similar rights, which may be extinguished by non-user for a certain number of years, which apparently must be not less than twenty; but the non-user must be of such a nature as to show an intention to abandon the right, as where it amounts to acquiescence in an unlawful interruption. (See INTERRUPTION.) A public officer is liable, according to Coke, to forfeiture for non-user or neglect to perform the duties of his office: see *Co. Litt.* 233*a*.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit, sit in possessione (*Co. Litt.* 295). (Confirmation is without effect unless he who confirms is either in possession of the thing itself or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.) See CONFIRMATION.

Non videntur qui errant consentire (*D.* 50, 17, 116). (Those who are mistaken are not deemed to consent.) That is to say, where an agreement has been made or an act done under a mistake of a material fact, then relief can be obtained in equity. See MISTAKE.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit (*Bac. Max. Reg.* 22). (He is not deemed to have consented who has altered anything at

the command of anyone using threats.) Compare NIHIL CONSENSUI, ETC.

Non videtur quisquam id capere, quod ei necesse est alii restituere (*D.* 50, 17, 51). (No one is deemed to take that which he must give up to another): he is in fact a mere conduit pipe.

Nook. An obsolete measure of land which appears to have sometimes meant twelve and a half acres, but which, according to Noye's *Complete Lawyer* (1651), contained two fardels (q.v.) or one-fourth of a yardland (q.v.).

Norman French. See FRENCH.

Norroy. See HERALDS.

Northampton, Statute of. The statute 2 Edw. 3, containing 17 chapters, most of which are now repealed. It was enacted at Northampton in 1328.

Northern Ireland. That part of Ireland comprising "the parliamentary counties of Antrim, Armagh, Down, Termanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry" (Government of Ireland Act, 1920, s. 1 (2)). The rest of Ireland was Southern Ireland (*ib.*), but is now the Irish Free State (q.v.).

North Sea Fisheries Convention. An agreement arrived at, on May 6, 1882, between Great Britain, Belgium, Germany, France, Denmark and Holland for the purpose of "regulating the police of the fisheries of the North Sea outside territorial waters." It does not affect the rights of the parties as regards their respective territorial waters.

Northstead, Manor of. See CHILTERN HUNDREDS.

Noscitur à sociis (3 *T. R.* 87). (A man is known from his associates.) So also the meaning of a word can be gathered from the context.

Nostrum est judicare secundum allegata et probata (1 *Dyer*, 12). (It is our duty to decide according to what is pleaded and proved.) This is a *dictum* of Shelley, J. Another form is JUDICIS EST JUDICARE, ETC. Compare NON REFERT QUID, ETC.

Notary Public is a person who attests the execution of any deeds or writings, or makes certified copies of them in order to render the same authentic, especially for use abroad (see LEGALIZATION). He is appointed to his office by the Archbishop of Canterbury, and can be removed from office by the Court of Faculties. An important branch of his duties is the protesting of bills of exchange (see PROTEST). He also makes a record of the proceedings in an ecclesiastical cause. See SCRIVENER.

Notation, in probate practice, is the act of making a memorandum of some special circumstance on a probate or letters of administration: thus where probate is granted of the will of a testator who died domiciled in England and it appears that part of the estate is in Scotland, then a notation of the fact that the testator died domiciled in England is made on the probate in order that recognition may be given to the grant in Scotland under the Confirmation and Probate Act, 1858.

Note of a Fine. This was "a brief of the fine made by the chirographer before it was engrossed." See FINE.

Note of Allowance. Under the Common Law Procedure Act, 1852, s. 149, either party to an action might deliver to one of the masters a memorandum alleging error in law, whereupon the master delivered to the party a note of the receipt thereof. A copy of this note—known as a note of allowance—together with a statement of the error relied on might then be served on the other side to ground proceedings in error (q.v.).

Notes. See JUDGE'S NOTES.

Not Guilty; Not Guilty by Statute. "Not Guilty" is the appropriate plea to an indictment where the prisoner wishes to raise the general issue (see ISSUE; PLEA), that is to say, when he wishes to deny everything and to let the prosecution prove what they can. It was also a plea used in common law actions of tort under the old practice, when the defendant simply denied that he had committed the wrong complained of. (See ISSUE.) Under the present system of pleading, a defendant must deal specifically with all allegations made by the plaintiff which he does not admit, and therefore a plea of "not guilty" is no longer permissible in civil proceedings other than informations at the suit of the Crown.

Down to 1894 there were certain public and private Acts of Parliament which provided (principally for the protection of constables, inspectors, and other public officers) that in all actions for anything done in pursuance of such Acts or in execution of the powers and authorities thereof, the defendant might plead "not guilty" which entitled him to give the special matter in evidence at the trial; that is, he might prove the facts of the case and show that he acted in pursuance of the statute, so that such a plea had the same effect as if he had pleaded the facts and his defence specifically. This was called pleading "not guilty by statute," but the defendant could not plead any other defence without leave; and he had to insert in the

margin of the plea the words "By Statute," together with the year, chapter, and section of the Act or Acts on which he relied and to specify whether they were public or private. Since 1st January, 1894, the right to plead "not guilty by statute" in any such cases has been taken away by the Public Authorities Protection Act, 1894, s. 2. The right to plead "not guilty" under any local or personal Act passed before 10th August, 1844, had previously been taken away by s. 3 of Pollock's Act (q.v.).

Notice. Primarily "notice" means knowledge or cognizance: and, therefore, when we speak of a Court taking judicial notice of a fact we mean that the Court recognises the fact without evidence to prove it. Thus the Courts notice the political constitution of our own Government, the existence and title of every State and Sovereign recognised by the Sovereign of England, the dates of the calendar, etc.

To give notice of a fact to a person is to bring it to his knowledge: when the circumstances are such that he is either actually aware of the fact, or might or ought to be aware of it, he is said to have notice of it.

Notice is either actual (express) or constructive. Actual or express notice is that given in plain words from one person to another, either verbally or in writing. When a written notice purports on the face of it to be a notice it is called a "formal notice."

Constructive notice is where knowledge of the fact is presumed from the circumstances of the case: thus where a person has actual notice of a charge or incumbrance on certain property, he is held to have constructive notice of facts to a knowledge of which he would have been led by an inquiry into the charge or incumbrance, whether his abstention from inquiry was fraudulent or merely negligent. So notice to an agent, solicitor, etc., is constructive notice to the principal or client, on the presumption that the agent did his duty by communicating the notice to his principal; therefore that presumption may be rebutted if it appears that the agent was a party to the fraud, or otherwise acted in such a way as to raise a presumption that he would not communicate the notice to his principal.

The doctrine of notice (formerly an equitable doctrine) is that a person who purchases an estate, although for valuable consideration, after notice of a prior equitable right, makes himself a *malâ fide* purchaser, and will not be enabled, by getting in the legal estate, to defeat that right, but will be held a trustee for the benefit of the person whose right he sought to defeat. Thus if a vendor contract with two different persons, for the sale to each of them of the same estate, and if the person with whom the second contract is made acquires notice of the first contract, and then procures a conveyance of the legal estate in pursuance of his own contract, the Court will order him to convey the property to the first purchaser.

As to notice of the assignment of a chose in action, see CHOSE IN ACTION.

See LIS PENDENS; PRIORITY; REGISTRATION; TACKING.

Notice of Accidents. See ACCIDENTS, NOTICE OF.

Notice of Action. When a statute imposes public or *quasi*-public duties on a person, such as a magistrate, constable, surveyor of highways, or the like, it frequently provided that before any action was brought against him for acts done in execution of his office, one month's notice of the intended action should be served on him. (See also AMENDS; NOT GUILTY.) Now, however, the Public Authorities Protection Act, 1893, s. 2, enacts that "so much of any public general Act as provides that notice of action is to be given is repealed." But where notice of action is required under a local or personal Act, such notice must still be given.

Notice of Admission. See ADMISSION. Notice of admission of fact is given under Ord. 32, r. 1.

Notice of Breaches. See PARTICULARS OF BREACHES AND OBJECTIONS.

Notice of Claim. See CITATION.

Notice of Dishonour. See BILL OF EXCHANGE.

Notice of Judgment or Order. In the Chancery Division, when an action is instituted for the administration of the estate of a deceased person, or for the execution of the trusts of an instrument, by or against one member of a class of persons (*e.g.*, one of the executors, administrators, residuary legatees, next of kin, trustees or *cestuis que trust*), it is not necessary to join the other members of the class as plaintiffs or defendants in the action (Ord. 16, rr. 33-38). Whenever, in any action for the administration of the estate of a deceased person, or for the execution of the trusts of any instrument, or for the partition or sale of any hereditaments, a judgment or order has been pronounced or made (under Ord. 15 or under Ord. 33) which affects persons not parties to the action, then

the Court or a judge may order such persons to be served with notice of the judgment or order (Ord. 16, r. 40); this gives them the right with one month of service to apply to have the order varied or discharged (*ib*); and it makes them parties (Judicature Act, 1873, s. 100).

Notice of Motion. See MOTION. Unless the Court or a judge gives leave for shorter notice, there must be at least two clear days' notice, except in applications to answer matters in an affidavit, in which latter case there must be at least ten clear days' notice (Ord. 52, r. 5). Sunday cannot be counted as one of the two clear days, but is counted as one of the ten clear days (see Ord. 64, r. 2).

Notice of Objections. See PARTICULARS OF BREACHES AND OBJECTIONS.

Notice of Trial. In the practice of the High Court, the plaintiff may give the defendant notice of trial of the action along with the reply (if any), or when the issues of fact are ready for trial, or (except in Admiralty action) four days after the delivery of the defence or the last of the defences if no reply has been ordered under Ord. 23, r. 1 (Ord. 36, r. 11); if the plaintiff fails to give such a notice within six weeks of the earliest possible time, the defendant may give notice of trial, or move to dismiss the action for want of prosecution (*ib*. r. 12). Ordinary notice of trial is a ten days' notice; and short notice of trial (which is sufficient, if the Court so orders, or if the party to whom it is given has consented to take it) is a four days' notice (*ib*. r. 14). See ACTION; TRIAL.

Notice of Writ of Summons, etc. In an action in the High Court, when the plaintiff has obtained leave, under Ord. 11, r. 1, to serve the defendant out of the jurisdiction, the defendant, if neither a British subject nor within the British dominions, is served with a notice (*ib*. r. 6) giving the substance of the writ of summons, and stating what will be the result of his not entering an appearance within the time allowed (Ord. 2, r. 5). This is done in lieu of serving the defendant with the writ of summons itself, because it is considered inappropriate to serve a foreigner in a foreign State with a mandate in the King's name. This now applies also to a variety of legal processes other than writs (Ord. 11, r. 8A).

When a defendant is suspected of keeping out of the way to avoid service, the Court, under Ord. 10, sometimes allows substituted service to be effected by notice of the writ or other legal process being given to the defendant, *e.g.*, by advertisement. (See SERVICE). See also Ord. 67, r. 5.

Notice to Admit. See ADMISSIONS (IN CIVIL PROCEEDINGS).

Notice to Produce. If one of the parties to an action is in possession of any document which would be evidence for the other party if produced, the latter may give him notice in writing (Ord. 66, r. 1) to produce it at the trial, and, in default of production, may give secondary evidence of it.

At any time before the trial of an action, any party to an action or other proceeding may give any other party notice to produce for his inspection any document referred to in the pleadings or affidavits of the party to whom the notice is given: and if he refuses to produce them without good cause, an order for inspection may be obtained from the Court (Ord. 31 r. 15).

See DISCOVERY; INSPECTION; PRODUCTION.

Notice to Quit. Where there is a tenancy of land or tenements from year to year, or from two years to two years, or other like indefinite period, a notice to quit is required, to enable either the landlord or the tenant to determine the tenancy without the consent of the other. As a general rule, no particular form is required, but the notice is usually in writing and formal

In some cases the length of notice required is fixed by special agreement between the lessor and lessee, in other cases it is fixed by a local custom, and in other cases by the general law of the land. Where a tenancy from year to year exists, without a special agreement or local custom as to its determination, half a year's notice, expiring at the end of the first or some other year of the tenancy, must be given; thus, if the tenancy commenced on the 25th March, notice to quit must be given on or before the 28th September, expiring on the 25th March following. In the case of land subject to the Agricultural Holdings Acts a notice to quit must purport to terminate the tenancy not earlier than twelve months from the end of the year of the tenancy during which the notice is served (Agriculture Act, 1920, s. 28), but this does not apply where the notice is from a military, etc., authority in respect of land required for military or other such purposes, where it is from a railway or other such company requiring the land for its undertaking, where there is a provision in the contract of tenancy authorising resumption for purposes other than agricultural, or where the notice is served by a tenant on a

sub-tenant, or where a receiving order has been made against the tenant (*ib.*).

Notice to Third Party. See CITATION.

Notice to Treat is the notice which a railway company or other public body having compulsory powers for the purchase of land is bound to give to the persons interested in any land which it is empowered and desires to purchase. The notice demands particulars of the estate and interest of the persons to whom it is given, and states that the company is willing to treat for the purchase of the land (Land Clauses Consolidation Act, 1845, s. 18). If the parties do not agree as to the compensation to be paid the amount is to be settled by two justices, where the amount claimed or offered does not exceed £50 (s. 22); and where the amount claimed or offered exceeds that sum, then the amount is to be settled by arbitration if the owner so requires, or if he does not so require, or if no award is made within three months, then it is to be fixed by a jury (s. 23).

Noting. This, in the law of bills of exchange, is a minute or memorandum made by a notary on a bill which he has presented, and which has been dishonoured It consists of his initials and charges, and the date, and, in the case of foreign bills, is considered as preparatory to a formal protest (q.v.). Noting must take place on the day of dishonour or the next following business day (Bills of Exchange (Time of Noting) Act, 1917, s. 1).

Notorious. In the law of evidence, matters deemed notorious do not require to be proved. There does not seem to be any recognised rule as to what matters are deemed notorious; cases have occurred in which the state of society or public feeling has been treated as notorious, *e.g.*, during times when sedition was rife.

Nova constitutio futuris formam imponere debet non præteritis (2 *Inst.* 292). (A new law ought to regulate what is to follow, not the past.) It is a general principle that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require that construction; and this involves the subordinate rule that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. Except in special cases, a new Act ought to be construed so as to interfere as little as possible with vested rights; and where the words admit of another construction, they should not be so construed as to impose disabilities not existing at the passing of the Act.

Compare LEX PROSPICIT, ETC.

Novæ Narrationes. A collection, made in the reign of Edward III., of the forms of pleadings then in use. It was first printed about the year 1515. See ARTICULI AD NOVAS NARRATIONES.

Novale. In old records this means either land newly converted from pasture to tillage or else fallow land, that is to say, land which lies untilled after either two years or one year of tillage.

Nova Statuta. The statutes from the year 1327 to 1483. They were first printed in 1485 by Maclinia; and they were reprinted by Pynson about twenty years later. Compare VETERA STATUTA.

Novation is where the promisee in a contract agrees to accept another person as the person to be bound in lieu of the original promisor. The term is practically confined to cases where a company or partnership transfers its liabilities to another company or partnership, in which case the question frequently arises whether there has been a novation, that is, whether the creditors or promisees have agreed to accept the liability of the new company or partnership in discharge of the old company or partnership.

The term is borrowed from the Roman law.

Novel disseisin. See ASSISE OF NOVEL DISSEISIN.

Novellæ. See CORPUS JURIS CIVILIS.

Novelty. An objection to a patent on the ground that the invention is not new or original, is called an objection for want of novelty. Only the "first inventor" is entitled to apply for a patent (Patents and Designs Act, 1907, s. 1 (1)) and the Comptroller, if satisfied that there is want of novelty, may either require the specification to be amended or may, subject to appeal, refuse to grant a patent at all (*ib.* s. 7 (4)). A design also is to be registered only if it is either "new or original" (*ib.* s. 49); but the degree of novelty required in the case of a design is less than that required in the case of a patent.

See DISCLAIMER; PATENTS; PUBLICATION.

Novitas non tam utilitate prodest quam novitate perturbat (*Jenk. Cent.* 167). (A new thing does not produce by its utility a benefit commensurate with the disturbance caused by its novelty.) Compare NIHIL TEMERE, ETC.; OMNIS INNOVATIO, ETC.

Noviter perventa, or **Noviter ad notitiam perventa,** in ecclesiastical procedure, are facts "newly come" to the knowledge of a party to a cause. Leave to plead facts *noviter perventa* is generally given, in a proper case,

even after the pleadings are closed, or on appeal.

Novum judicium non dat jus novum, sed declarat antiquum, judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum (10 *Rep.* 42). (A new judgment does not make new law, but declares the old law; because a judgment is the enunciation of law, and by judgment the law is newly revealed which was previously hidden.) This maxim is, of course, based on the theory that within the common law—which had "neither fault nor flaw"—there was an amorphous body of law, covering every conceivable case, which had only to be put into shape by the judges in their judgments. The law was in fact the Sleeping Beauty and the judge was the Fairy Prince.

Compare DORMIT, ETC.

Nuces colligere. (To gather [hazel] nuts.) This was anciently a service due from some tenants to the lord.

Nudi consensus obligatio contrario consensu dissolvitur (*D.* 50, 17, 35). (The binding force of a contract made without consideration is terminated by an agreement to the contrary effect.)

Nudum pactum. A nude contract, that is to say, a contract made without consideration and upon which, unless it be under seal, no action will lie.

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem (*Plow.* 309). (A contract is a naked contract (*nudum pactum*) where there is no consideration except the agreement: but where there is consideration the contract becomes binding and constitutes a cause of action.)

Nuisance is either public (common) or private.

A public or common nuisance is an act which interferes with the enjoyment of a right which all members of the community are entitled to, such as the right to fresh air, to travel on the highways, not to be exposed to danger to health from infectious diseases, unwholesome food, etc. Hence, if a person carries on a manufacture from which noxious fumes are emitted, or exposes for sale unwholesome food, or stops up or obstructs a highway, or allows buildings belonging to him near a highway to become ruinous, he commits a public nuisance. The remedy for a public nuisance (which is a misdemeanour) is by indictment or information, and in certain cases by abatement (q.v.); and if special damage is caused to an individual, he has an action for damages or injunction against the wrongdoer. Modern legislation has also provided a summary mode of dealing with nuisances. Thus, under the Public Health Acts, local sanitary authorities are required to ascertain by inspection what nuisances exist within their districts, and the local magistrates are empowered to deal summarily with such as are found to exist

A private nuisance is such a continuous infringement of a natural right of property as would in process of time give the wrongdoer an easement or prescriptive right to do an act which was originally tortious. Thus, if a man builds a house so close to mine that his roof overhangs mine, and the water flows off his roof upon mine, this is a nuisance, for which an action will lie. Similarly, if my neighbour carries on a noisy or offensive trade, or if anyone injuriously interferes with my watercourse, market, ferry, or the like. This remedy for a nuisance is either by abatement (q.v.), or by action for damages, injunction, or mandamus. See PRESCRIPTION; TORT; DISTURBANCE.

Null and Void. An expanded form of void (q.v.) from which it does not clearly differ.

Nulla bona ("no goods") is the name given to the return made by a sheriff, sequestrator, or other officer, to a writ or warrant authorising him to seize the chattels of a person, when he has been unable to find any to seize. It is a not infrequent return to a writ of *fieri facias* (q.v.).

Nulla curia quæ recordum non habet potest imponere finem, neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo (8 *Rep.* 60). (No Court which has not a record can impose a fine, or commit any person to prison; because those powers belong only to Courts of record.) This, of course, does not apply to statutory Courts such as petty sessions or the police Courts of the metropolis.

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia (*Co. Litt.* 78). (Things which are impossible or shameful are not to be presumed, but rather things which are true and seemly and possible.) Coke is speaking of the question whether a will was obtained by collusion.

Nulla pactione effici potest ut dolus præstetur (*D.* 2, 14, 27). (By no contract can it be arranged that a man shall be indemnified against responsibility for his own fraud.)

Nullity of Marriage. Where a marriage is void, on the ground that it was to the know-

ledge of both parties celebrated without the proper formalities, or that one of them was not single at the time, or that they are within the prohibited degrees of consanguinity or affinity, or that one or both of them were not consenting to the marriage, or are unable to perform the duties of matrimony, then either of them, unless the default or defect invalidating the marriage lies in him or her only, may present a petition to the High Court in the Probate, Divorce and Admiralty Division, and obtain a decree declaring the nullity of the marriage. See DECREE; DIVORCE.

Nullius filius. A bastard (q.v.).

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit (*Co. Litt.* 383). (The authority of no man ought so to prevail with us that we should not adopt better things, if another bring them.) Quoted in connection with a point on which Littleton differed from Newton, C.J., the latter being in the wrong.

Nullum arbitrium; Nul tiel agard. (There was no such award.) This was formerly the common plea of a defendant sued on an award

Nullum exemplum est idem omnibus (*Co. Litt.* 212). (No example is the same to all.) No precedent is the same for all cases: that is to say, alterations in the forms of conveyances are necessary to fit them for particular cases.

Nullum fecerunt arbitrium. (They never submitted to arbitration.) The name formerly applied to the plea of a defendant sued upon an award, which denied that there had been an arbitration.

Nullum iniquum est in jure præsumendum (*Rep.* 72). (The doing of anything contrary to justice is not to be presumed in law.) The maxim is also cited at Hard. 61. There are exceptions to it: see for instance IN ODIUM SPOLIATORIS, ETC.

Nullum simile est idem (4 *Rep.* 18; *Co. Litt.* 3*a*). (A thing which is similar to another thing is not the same as that other thing.) Cited 3 *T. R.* 664 (by Buller, J.), and also in several other cases, as a warning against being misled by analogies. Another form of the maxim is *nullum simile est idem nisi quatuor pedibus currit*, that is to say, things similar to one another are not the same unless they are on four feet with one another. Compare ARGUMENTUM A SIMILE, ETC.; and yet another form is, *nullum simile quatuor pedibus currit* (No simile is exactly on all fours with any other). Compare TALIS NON, ETC.

Nullum tempus aut locus occurrit regi (2 *Inst.* 273). "Time never runs against the Crown," is a maxim grounded on the principle that no laches can be imputed to the Sovereign, whose time and attention are supposed to be occupied by the cares of government; and therefore the ordinary Statutes of Limitations do not bind the Crown. But by the Crown Suits Act, 1769, commonly called the Nullum Tempus Act, and the Crown Suits Act, 1861, the common law rule has been altered, and the Crown is barred by lapse of time in cases within those Acts. The statutes 7 & 8 Vict. c. 105; 23 & 24 Vict. c. 53, and 24 & 25 Vict. c. 62, apply to the lands of the Duchy of Cornwall.

See NEC TEMPUS, ETC.

Nullus commodum capere potest de injuriâ suâ propriâ (*Co. Litt.* 148). (No one can gain an advantage by his own wrong.) This is the Latin form of NUL PRENDRA, ETC. The maxim goes much further than to say merely that no man shall profit by his own fraud: he is not allowed to profit by his own mistake, and so where he grants a lease believing that he has a sufficient estate to grant it and purporting to grant thereout, he will not be heard to say that he did not grant it under a power which in fact made the lease valid. Compare NEMO EX, ETC.

Nullus videtur dolo facere qui suo jure utitur (*D.* 50, 17, 55). (No one is to be deemed a wrongdoer who merely avails himself of his legal rights—that is to say, no action will lie against him for so doing.

Nul prendra advantage de son tort demesne (*Branch Max. 5th ed.*, p. 141). (No man shall profit by wrong that he does.)

Nul Tiel Record was the name given to that plea or defence which a defendant sets up to an action brought against him on some matter of record, when he avers that "no such record" as that alleged by the plaintiff exists. See CONTRACT; FAILURE OF RECORD; JUDGMENT; MITTIMUS; RECORD, TRIAL BY.

Nunc pro tunc. In procedure, the Court sometimes directs a proceeding to be dated as of an earlier date than that on which it was actually taken, or directs that the same effect shall be produced as if it had been taken at an earlier date. Thus it will direct a judgment to be ante-dated if the entry of it has been delayed by the act of the Court, or if the plaintiff has died between the hearing and the date when the judgment was delivered. This is called entering a judgment *nunc pro tunc* (="now for then").

Nuncupative. See WILL.

Nunquam crescit ex post facto præteriti delicti æstimatio (*Bac. Max. Reg.* 8). (Once an offence has been committed its gravity is not increased by any subsequent offence.) This is a maxim of Paulus (*D.* 50, 17, 138) which Bacon uses to illustrate, *inter alia*, the proposition that if A slandered B, a commoner, and B afterwards became a peer, proceedings for *scandalum magnatum* would not be available for B, whose only remedy would be an action on the case. He does not quote it as an authority for the doctrine that penal statutes should not be retrospective.

Nunquam indebitatus. See NIL DEBET.

Nunquam res humanæ prosperè succedunt ubi negliguntur divinæ (*Co. Litt.* 95). (Human things never prosper where divine things are neglected.) Quoted in an encomium of tenure in frankalmoign.

Nuper obiit. A writ which lay for a sister and co-heir, deforced by her coparcener of lands or tenements whereof their father, brother, or any other common ancestor died seised of an estate in fee simple. It was one of the many writs abolished by the Real Property Limitation Act, 1833, s. 36.

Nuper vicecomes, an ex-sheriff. See DISTRINGAS.

Nuptias non concubitus sed consensus facit (*D.* 50, 17, 30). (It is contract, not cohabitation, which makes a marriage.) The Roman original of Coke's *Consensus non, etc.* (q.v.).

Nurture. See GUARDIAN.

O

Oath of Office. See PROBATE.

Oaths are of two kinds, according as they relate to the truth of a statement as to past events, or to an intention to do something at a future time. The latter are called promissory oaths.

An oath verifying a statement as to past events is a religious asseveration by which the party calls his God to witness that what he says is the truth; consequently, an oath may be administered to a person who believes in a God, although he is not a Christian; while it cannot, in the case of atheists or very young children who have no religious belief. (See AFFIRM.) Such an oath is sometimes called "judicial" when given in a matter pending before a tribunal, and "extrajudicial" or "voluntary" in other cases. Declarations (q.v.) have been substituted for extrajudicial oaths in most cases. As to the punishment for making a false oath, see PERJURY; FALSE SWEARING. See also AFFIDAVIT; DEPOSITION.

The manner of swearing a witness which is now almost universally adopted is that authorised by the Oaths Act, 1909, s. 2, which, however, provides that where a witness so requires he is to be permitted to be sworn with the form of words formerly used and to "kiss the Book" or Testament, and that anyone who is neither a Christian nor a Jew may be sworn in any manner previously lawful, that is to say, in any way which he declares to be binding on him.

Promissory oaths include the oath of allegiance (see ALLEGIANCE; NATURALIZATION)—the official (q.v.) oath, taken by certain high officers of the Crown on accepting office—the parliamentary oath, taken by members of Parliament before taking their seats, and the judicial (q.v.) oath, taken by the judges and justices of the peace on accepting office Jurors, executors, administrators, and some other persons, are also required to take an oath for the due performance of their duties. See COMPURGATION; EX OFFICIO OATH; RECUSANT.

O.B.E. See BRITISH EMPIRE, ETC.

Obedience; Obedientia. In the canon law, as it applied before the Reformation, this meant not merely compliance with a command, but a monastic office or the administration of it.

Obit. Anciently this meant a Requiem Mass celebrated while the corpse was in the church before interment; and it also meant a mass celebrated annually for the repose of the soul of a deceased person. Many churches held lands and received annual payments in consideration of the annual celebration of *obits*: all such lands and payments were confiscated to the Crown by the statute 1 Edw. 6, c. 14, ss. 4, 5.

Obiter dictum. See DICTUM.

Objection. See EXCEPTION.

Oblata. In the Exchequer this anciently meant debts to the Crown which the outgoing sheriff had been unable to collect and which were handed on to the incoming sheriff for collection by him.

Oblations, or obventions, are offerings or customary payments made to the minister of a church, including fees on marriages, churchings, burials, mortuaries, etc. (q.v.), and Easter offerings.

The Baptismal Fees Abolition Act, 1872, makes it illegal for any clergyman of the Church of England or any parish clerk, etc., to demand any fee for baptism or for the

registry thereof; but it does not prohibit the acceptance of any such fee spontaneously offered.

The ceremonies at the coronation of the Sovereign include the "oblation" to the King of a pall or altar-cloth of gold and a wedge of gold weighing one pound and the "oblation" of the Sword of State. The first of these oblations was omitted at the last two coronations, to the loss of the Lord Chamberlain; he is entitled to the pall and the wedge after the oblation, if he claims them.

Obligation.—I. In its most general sense, especially in jurisprudence, obligation signifies the relation between two persons, one of whom can take judicial proceedings or other legal steps to compel the other to do or abstain from doing a certain act. Although it includes both the right of the one and the duty of the other, the term is more frequently used to denote the latter.

With reference to the origin and nature of obligations, see RIGHT.

With reference to their remedies, obligations are either perfect or imperfect. A perfect obligation is one which can be directly enforced by legal proceedings in the ordinary way: thus, if A contracts to pay B £50, B can enforce the obligation by bringing an action against A. (See REMEDY.) An imperfect obligation is one which cannot be directly enforced but still has some legal effects. Imperfect obligations may be divided into two classes: (1) An obligation may have been originally perfect, but have become imperfect from the remedy having been taken away: thus, if an action on a simple contract is not brought within the time prescribed by the Statutes of Limitations, the remedy by action is gone, although the right still exists, and may become available in certain cases; for instance, if a debt is barred by the statute, the creditor may nevertheless, if he has the chance, obtain payment of it by a lien or by appropriation of payment, or the remedy may be revived by an acknowledgment by the debtor (see the various titles). (2) An obligation is imperfect if no proceedings can be taken on it, because it does not satisfy the requirements of the law in regard to form or otherwise: thus, no action can be brought on a contract under the 4th section of the Statute of Frauds (*e.g.*, for the sale of land), so long as the contract is not in writing signed by the party to be charged; but the contract nevertheless exists for other purposes, and, therefore, money paid under it cannot be recovered back merely on the ground of its not being enforceable by action. So solicitors, medical practitioners, etc., cannot recover remuneration for their services unless they have complied with the Acts requiring them to take out certificates (q.v.).

II. In the technical sense of the term, an obligation is the same thing as a bond. In the case of a conditional bond, the operative part is sometimes called the obligation, to distinguish it from the condition. See BOND.

Obligee; Obligor. The obligee is the person who receives and the obligor is the person who gives a bond (q.v.).

Obreption. In ecclesiastical law, this is the obtaining of a faculty, dispensation, etc., by means of a false statement. Compare SUBREPTION.

Obscene; Obscenity. A publication is said to be obscene when its tendency is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands it is likely to fall. Obscene publications or libels are punishable with fine or imprisonment, being misdemeanours at common law. So also is the obtaining of such publications for purposes of sale; but the mere possession of them is not. The Obscene Publications Act, 1857, s. 1, gives justices power to issue a warrant to search for such publications upon information upon oath being made that they are kept for purposes of gain, and empowers a Court of summary jurisdiction to order them to be destroyed. As to exposing such publications, or any indecent exhibition, to view in public places see the Vagrancy Act, 1824, s. 4, and the Town Police Clauses Act, 1847, s. 28. See PHOTOGRAPHS.

Obtaining Credit. As to an undischarged bankrupt obtaining credit, see s. 155 of the Bankruptcy Act, 1914. As to obtaining credit by fraud, see DEBTORS ACT, 1869.

Obtemperandum est consuetudini rationabili tanquam legi (4 *Rep.* 38). (A reasonable custom is to be obeyed as if it were law.) This is said of a custom of a manor.

Obvention. See OBLATION.

Occasio. In the time of Fleta this meant a levy made by a lord on those holding of him for war or other urgent necessity.

Occasiones. The same as assarts (q.v.).

Occultatio thesauri inventi fraudulosa (3 *Inst.* 133). (The concealment of discovered treasure is fraudulent.) It is in fact a misdemeanour: see TREASURE TROVE.

See THESAURUS, ETC.

Occupancy; Occupant. Occupancy is where a person takes possession of an ownerless thing.

Occupancy, as a mode of acquiring title to personal property, is of comparatively little importance in English law, being principally confined to the case of goods unclaimed or thrown away (see DERELICT; ESTRAYS; WAIFS), and game or animals *feræ naturæ* (*e.g.*, fish in the sea or a river) when taken by the finder or pursuer. See GAME.

As regards land, the doctrine of occupancy was formerly of some importance. If A granted land to B. during the life of C, and B died before C, then there was no one entitled to the land, because A had parted with his right during C's life, and B's estate had determined with his own death; therefore anyone might enter on the land and retain possession during the remainder of C.'s life. A person so entering was called an occupant ("because his title is by his first occupation"), or, more commonly, a general occupant, because any one might enter in this manner. This doctrine of general or common occupancy was abolished by the Statute of Frauds, s. 12, under which, and subsequent statutes, a tenant *pur auter vie* may dispose of his interest by will, and in default of such disposition it forms part of his personal estate. The Wills Act, 1837, ss. 3, 6, has now been substituted for s. 12 of the Statute of Frauds.

If A grants land to B and his heirs during the life of C, and B dies before C, B's heir may enter and hold possession, and in such case he is called a special occupant, having a special right of occupation by the terms of the grant (and see ESTATE TAIL; FREEHOLD).

Occupation; Occupier.—I. In its usual sense, occupation is where a person exercises physical control over land. Thus, the lessee of a house is in occupation of it so long as he has the power of entering into and staying there at pleasure and of excluding all other persons (or all except one or more specified persons) from the use of it. Occupation is therefore the same thing as actual possession. See POSSESSION; USE AND OCCUPATION.

Permissive occupation is where the occupier has merely a licence or permission from the person entitled to the occupation.

In the law of rating, occupation signifies actual use and enjoyment, as distinguished from mere possession. Thus a freeholder is in the possession of the minerals beneath the surface of his land, and of a house which is to let, whether empty or in the custody of a caretaker, but he is not in occupation of them for the purpose of rating. To constitute a rateable occupation, it must be exclusive as well as beneficial; therefore lodgers (q.v.), licensees (*supra*), and servants are not rateable occupiers.

In the law of parliamentary and municipal elections, the occupation of a dwelling-house, lands, or lodgings, was one kind of qualification for being registered as a voter (known as an inhabitant occupier); but this qualification is now gone. See ELECTORAL FRANCHISE.

II. In a technical sense, "occupation is a word of art, and signifieth a putting out of a man's freehold in time of warre: and it is all one with a disseisin in time of peace." (6 *Co. Litt.* 249*b*.) Such occupation, however, did not produce a descent cast as a disseisin did. (See DESCENT CAST.) And in civilised warfare at the present day, occupation of an enemy's territory does not interfere with the rights of private owners, even if the territory is permanently annexed by the conquerors. As to moveables, see CAPTURE; PRIZE.

Occupavit. Anciently this was a writ which lay for him who had been ejected out of his freehold in time of war, as *novel disseisin* lay for him ejected in time of peace. See OCCUPATION (II.).

Occupier's Liability Notice. The popular title of the notice which the owner of land should serve on the owner of a tithe rent-charge in a case where the occupier of the land is liable for the payment of the charge under a contract made before 26th March, 1891 (Tithe Act, 1891, s. 2 (6)). Unless such contract exists the charge is payable by the landowner (*ib.*, s. 1 (1)). See TITHE.

Octave. The eighth day after a festival, both days being counted: thus the octave of Easter was the following Sunday.

Octo Tales. See TALES.

Odio et atia, De. At a very early period this was a writ which lay for a man committed to prison upon suspicion of murder; it commanded the sheriff to inquire whether the committal was upon just cause of suspicion or only upon malice and ill-will (*odio et atia*): if, upon the inquisition, it was found that there was, in the modern phrase, no case against the prisoner, then another writ issued commanding the sheriff to bail him.

Œconomicus. Anciently this meant an executor.

Of Course. A step in an action or other proceeding is said to be of course when the Court or its officers have no discretion to refuse it, provided the proper formalities have been observed. In this sense the issue of a writ of summons is a matter of course. (See WRIT.) An order of course means an order made on an *ex parte* application to which a

party is entitled on his own statement and at his own risk. The term is most commonly applied to those orders which are obtained (under Ord. 62, r. 18) by petition (q.v.) of course from the Registrar of the Chancery Division of the High Court, which, as in the case of an application to tax a solicitor's bill of costs, may be an originating application, or which, as in the case of an application to carry on proceedings under Ord. 17, may be in a pending action. An order of course improperly obtained may be set aside.

Offa. See ANGLO-SAXON LAWS.

Offence. The word "offence" has no technical meaning in English law, but it is commonly used to signify any public wrong, including, therefore, not only crimes or indictable offences, but also offences punishable on summary conviction. The word is used as part of the titles of various Acts, such as the Coinage Offences Act, 1861, and the Offences against the Person Act, 1861; and in various enactments such as the Probation of Offenders Act, 1907, s. 1, it is used as a comprehensive term to cover anything for which a Court can inflict punishment.

Offensive Trade. For the purposes of the Public Health Act, 1875, ss. 112-116, this means "the trade of blood boiler, bone boiler, fellmonger, soap boiler, tallow melter or tripe boiler or any other *noxious or offensive trade, business or manufacture* (*ib.* 112); in districts where the Public Health Acts Amendment Act, 1907, is in operation the following words, that is to say, "trade, business or manufacture which the local authority declare by order, confirmed by the Local Government Board [now Ministry of Health] and published in such manner as the Board [now Ministry] direct, to be an offensive trade" are substituted by s. 51 (1) of that Act for the italicised words of s. 112 of the Act of 1875. An "offensive trade" may not be established now in any urban district without the licence of the urban authority (Act of 1875, s. 112), but there is no such enactment as regards rural districts; both in urban and in rural districts the local authorities may make bye-laws in order to minimise the offensiveness of any offensive trade, no matter when established, which is lawfully carried on within their districts (Act of 1875, s. 113; Act of 1907, s. 51 (2)); in any urban district proceedings may be taken under s. 114 of the Act of 1875 for nuisance arising from "any candle house, melting-house, melting-place, or soap house or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning or crushing bones, or any manufactory, building, or place used for any trade, business, process or manufacture causing effluvia"; but outside urban districts the only remedy is under the law relating to nuisances generally.

In the administrative county of London (to which the Acts of 1875 and 1907 do not apply) no one, since 31st December, 1891, can start the business of blood boiler, bone boiler, manure manufacturer, tallow melter, knacker or (if tallow, animal fat or oil other than olein is mixed with alkali to produce soap) soap boiler (Public Health (London) Act, 1891, s. 19), or can start without the licence of the county council the business of fellmonger, tripe boiler, slaughterer of cattle or horses or any other business duly declared to be an offensive business (*ib.*); bye-laws may be made for any business lawfully carried on under the section (*ib.*), and summary proceedings are available to abate nuisances arising from any such business (s. 21).

See ALKALI WORKS; NUISANCE.

Offer. Every agreement in substance consists of an offer made by one party and its unconditional acceptance by the other. An acceptance, with conditions or new terms added, is in effect a new offer, and does not operate as an acceptance of the original offer. An offer may be withdrawn at any time before it has been unconditionally accepted: and if the person to whom an offer is made refuses it, or neglects to accept it within a reasonable time, it is deemed to be at an end, and he cannot afterwards revive it by purporting to accept it. See ACCEPTANCE; AGREEMENT; LETTER.

Offerings. See OBLATIONS.

Offertory; Offertorium. During the Communion Service, while the portion known as the offertory sentences is being read, the churchwardens "or other fit persons," each carrying "a decent basin," go round amongst the congregation and make a collection. Before the Reformation the collection made at the part of the mass known as the offertory was for the use of the priest; the offertory since the Reformation has been applicable to "such pious and charitable uses as the minister and churchwardens shall think fit."

Office.—I. In the usual sense of the word, an office is the right and duty to exercise an employment: thus, we speak of the office of a trustee, executor, guardian, director, sheriff, judge, etc. Offices are either public or private: a public office being one which entitles a man to act in the affairs of others without their appointment or permission. Public

offices are granted either for life or (as in the case of judges of the High Court) during good behaviour (*dum*—or *quamdiu*—*bene se gesserit*), or (as in the case of nearly all offices held of the Crown) during the pleasure of the appointor (*durante bene placito*), and some few offices, such as that of Earl Marshal (q.v.), are capable of being granted to a man and his heirs (in which case they are incorporeal hereditaments), or of being entailed (in which case they are also tenements). Public offices are either offices of trust, which cannot be performed by deputy (including offices of judges, justices of the peace and other judicial offices), or ministerial offices, which may be performed by deputy. See OATH.

See AMOTION; DEMISE; PUBLIC OFFICER; PUBLIC OFFICES, SALE OF.

As to private offices, see EXECUTOR; GUARDIAN; TRUSTEE; and the other titles dealing with them.

II. "Office" is frequently used in the old books as an abbreviation for "inquest of office" (q.v.); when the jury on inquest of office had found the facts to be inquired into, and the verdict or inquest had been returned, the office was said to be found and returned.

Office Copy. See COPY.

Office Found. The decision of an inquest of office (q.v.) to the effect that the king was entitled to the lands or chattels in question.

Office of Profit. The Act of Settlement, (12 & 13 Will. 3, c. 2,) s. 3, provided that no person having an office or place of profit under the Crown could be a member of the House of Commons. This enactment was repealed in 1706. The Succession to the Crown Act, 1707, s. 24, enacts that persons holding any "office or place of profit under the Crown" which was created after 25th October, 1705, and persons holding various offices specified in the section, shall be incapable of being elected or sitting as members of the House; s. 25 enacts that any member accepting any office of profit from the Crown which does not come within s. 24 shall cease to be a member but may be re-elected; s. 27 enacts that the acceptance of any new or other commission in the army or navy shall not disqualify or cause a member to lose his seat.

This enactment, if it stood by itself, would disqualify for membership nearly all the members holding salaried political offices who are now in the House. They are there by virtue of a number of Acts passed since 1705 which, while creating new offices, have expressly declared that the holders thereof should not be ineligible for election, or by virtue of the Representation of the People Act, 1867, s. 52, which enables a minister holding one of certain offices specified in Schedule H thereof to accept another of these offices without vacating his seat, or by virtue of the Re-election of Ministers Act, 1919, the effect of which is that where, within nine months of the issue of a proclamation summoning a new Parliament, a member accepts an office the holder of which is eligible for membership, then he shall not vacate his seat, and, that if the office be one included in Sch. H to the Act of 1867, he may accept any other office included in the schedule without vacating his seat. The offices of the Ministers of Agriculture and Fisheries, of Health, of Labour, of Pensions, and of Transport, and the offices of the President of the Board of Education, and of the Secretary for Scotland have been added to Sch. H of the Act of 1867 by the various enactments creating those offices: the same was the case as regards the offices of various ephemeral ministers created in connection with the war of 1914-1918. Many offices of profit, other than those which are held by politicians going in and out with the ministry of the day, have been expressly declared by various Acts to disqualify the holders for membership of the House. These offices run from the great office of Master of the Rolls, who for the first time was disqualified by s. 5 of the Judicature Act, 1875, down to minor offices, such as those of clerks in the Treasury (House of Commons Disqualification Act, 1741).

There is no statutory definition of the expression "office of profit under the Crown." Anything held direct of the Crown which purports to be a source of income, although it may in fact be nothing of the kind, is held to come within the meaning of the expression. Hence a member vacates his seat by accepting the Stewardship of the Chiltern Hundreds or any other of the nominal offices mentioned under Chiltern Hundreds (q.v.). See KING'S COUNSEL.

Office of the Judge. In ecclesiastical law, it is said that "the office of the judge is promoted" when criminal proceedings are taken. The meaning of the expression is, that inasmuch as all spiritual criminal jurisdiction is in the hands of the bishop or ordinary (*judex ordinarius*), his office or function is set in motion whenever such proceedings are instituted. The person taking the proceedings is known technically as *promotor officii judicis*: he is *promotor necessarius* when the machinery of the Court is set in motion by the ordinary

ex mero motu (q.v.) and he is *promotor ordinarius* in other cases.

Official, in ecclesiastical law, is the judge of an archdeacon's Court. See DIOCESAN COURTS.

Official Assignee. See ASSIGNEE.

Official Liquidator. Under the Companies Act, 1862, s. 92, after a winding-up order had been made, official liquidators were appointed for the purpose of carrying out the winding up under the direction of the Court. There is now no such thing as an "official liquidator." See LIQUIDATOR.

Official Oath. This means the form of oath set out in s. 3 of the Promissory Oaths Act, 1868, which, under s. 5 of that Act, must be taken by all ministers and other high officers of State, including, under various Acts passed since 1868, several ministers (such as those of Agriculture, Health, Pensions, Transport, etc.) whose offices have been created since that date. This oath is quite distinct from the oath of office, as to which see PROBATE.

Official Principal is an ecclesiastical officer whose duty it is to hear causes between party and party, as the delegate of the bishop or archbishop by whom he is appointed. He generally also holds the office of vicar-general (q.v.) and (if appointed by a bishop) that of chancellor (q.v.). The Official Principal of the province of Canterbury is called the Dean of Arches. See COURT OF ARCHES.

Official Receivers. These are officers, appointed by the Board of Trade, who act in bankruptcy (see Bankruptcy Act, 1914, ss. 70-75) and also in the winding-up of companies (see LIQUIDATOR; and Companies (Consolidation) Act, 1908, ss. 146-148).

Official Referee. See REFEREE.

Official Secrets. Legislation to prevent the disclosure of official secrets began with the Official Secrets Act, 1889. The wonder is that no Act on the subject was passed until then. So far back as 1878 a clerk in the Foreign Office was employed to copy a secret agreement between Great Britain and Russia. He took a copy for his own use and gave it to a London newspaper, in which it was published: he was arrested on an obviously untenable charge of larceny: and he was discharged because he had committed no offence known to the law. The facts in the case would have constituted a "breach of official trust" punishable under s. 12 of the Act of 1889. That Act, in addition, covered various cases of improperly obtaining or endeavouring to obtain information as to military or naval matters. It was repealed and re-enacted, with amendments and additions, by the Official Secrets Act, 1911: and the Act of 1911 was materially amended and extended by the Official Secrets Act, 1920. The Act of 1920 contains a number of remarkable ancillary provisions. The fact that a person charged with an offence has been in communication with any person "reasonably suspected" of being an agent of a foreign Power, or that he even has in his possession the address of any such person, is evidence against the accused (s. 2): a Secretary of State may require the production by cable companies of any paper relating to any telegram, whether wireless or otherwise, which he sees fit to specify (s. 4); and every person who receives letters for others must be registered with the police and must keep a record, which the police can inspect, of letters passing through his hands (s. 5). See IN CAMERA.

Official Solicitor. The Official Solicitor of the Court of Chancery was an officer whose functions consisted of protecting the Suitors Fund (q.v.) and of administering so much of that fund as came under the spending power of the Court. He was transferred to the High Court by the Judicature Act, 1873, s. 77, which made no change in the title of his office: in view, however, of the fact that the Court of Chancery is gone, he is now known as the Official Solicitor of the Supreme Court. When so directed, he acts for persons suing or being sued *in forma pauperis* (q.v.); he acts generally as solicitor in cases in which the Chancery Division requires his services as solicitor: he visits persons in custody for contempt: and see Ord. 22, r. 12B.

Official Trustee of Charity Lands is the secretary of the Charity Commissioners. He is a corporation sole for the purpose of taking and holding real property and leaseholds upon trust for an endowed charity in cases where it appears to the Court desirable to vest them in him. He is a bare trustee, the possession and management of the land remaining in the persons acting in the administration of the charity. See the Charitable Trusts Act, 1853, ss. 47-50, and the Charitable Trusts Act, 1855, s. 15.

Official Trustees of Charitable Funds are persons in whom the money, stocks or investments of any endowed charity may be vested (either voluntarily or by order of the Court) for the purpose of security or convenient administration. They are appointed by the Charity Commissioners, with the approval of the Treasury, and form a corporation. See the Charitable Trusts Act, 1853, s. 51; the

Charitable Trusts Act, 1855, s. 18; and the Charitable Trusts Act, 1887, s. 4.

Official Use. Before the Statute of Uses, an official use was one which imposed a duty upon the feoffee to uses; it made him in fact what would now be called a trustee.

Officiariis non faciendis vel amovendis. This was a writ addressed to municipal corporations commanding them not to admit such and such a one to office or to remove him from office. It was superseded by the writ of *quo warranto* (q.v.).

Officina justitiæ. (The workshop of justice). The common law side of the Chancery was anciently so called, inasmuch as all original writs issued from it although returnable to the common law Courts. (See CHANCERY.) "This Court," says Coke, "is *officina justitiæ* out of which all original Writs and all Commissions which passe under the Great Seale go forth, which Great Seale is *Clavis regni*" (4 *Inst.* 80).

Officious Will. A will by which the testator fulfils the duty (or *officium*) of providing for his family. The expression belongs to Roman, rather than to English, law. Compare INOFFICIOUS, ETC.

Officit conatus si effectus sequatur (*Jenk. Cent.* 55). (An attempt becomes harmful if the effect follows), and sometimes even when it does not: see ATTEMPT.

Off-licence. "In this Act, unless the context otherwise requires . . . the expression 'justices' off-licence' means a justices' licence for the sale of any intoxicating liquor not to be consumed on the premises" (Licensing (Consolidation) Act, 1910, s. 110).

Oil in Navigable Waters Act, 1922. This enactment was passed in order (see its title) to prevent the discharge or escape of oil into navigable waters. For the purposes of the Act "the expression 'oil' means oil of any description and includes spirit produced from oil and oil mixed with water" (s. 8 (1)): and it therefore includes petroleum and petrol as well as the crude oil (used as a substitute for coal in oil-fired marine engines and used also for internal-combustion engines of the Diesel type) against which it is more especially directed. The waters to which the Act applies are "the territorial waters of Great Britain and Northern Ireland and the waters of harbours therein" (s. 8 (3)). There is nothing in the Act—or elsewhere—to prevent the discharge of oil outside the three-mile limit.

Old Age Pensions. The Old Age Pensions Act, 1908, introduced the system under which, with few exceptions, everyone on reaching the age of seventy became entitled to a weekly pension of 5s. during his life where his yearly means from other sources did not exceed £21, and to a rate of pension sinking by sums of 1s. a week according as the yearly means exceeded £21 but did not exceed £31 10s. Where the yearly means exceeded £31 10s. there was no pension.

The Act of 1908 was amended as regards details by the Old Age Pensions Act, 1911, and was materially altered by the Old Age Pensions Act, 1919, the main effect of these alterations being that now the yearly means which disqualify for a pension must amount to £49 17s. 6d., that the pension is 10s. a week where the yearly means do not exceed £26 5s., and that the pension sinks by a sliding scale when the yearly means exceed £26 5s. but do not exceed £49 17s. 6d. See BLIND PERSONS.

Old Bailey. See CENTRAL CRIMINAL COURT.

Old Christmas Day. The 7th January, which represents the 25th December of the period before the reform of the calendar.

Old Lady Day. The 7th April, which represents the 25th March of the period antecedent to the reform of the calendar (q.v.).

Old Lammas Day. See LAMMAS.

Old Martinmas. The 24th November, corresponding to the 11th November of the period before the reform of the calendar.

Old Metals. "In the construction and for the purposes of this Act the term "dealer in old metals" shall mean "any person dealing in, buying and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, whether such person deals in such articles only or together with second-hand goods or marine stores, and the term 'old metals' shall mean the same articles" (Old Metal Dealers Act, 1861, s. 3). The Children Act, 1908, s. 116, gives the same definition of "old metal."

The business of a "dealer in old metals" is regulated by the Old Metal Dealers Act, 1861—to which reference should be made—as well as by the Prevention of Crimes Act, 1871, s. 13, which provides that he may not buy less than 112 lbs. of lead, or 56 lbs. of copper, brass, tin, pewter or German silver; by s. 116 of the Children Act, 1908; by ss. 9 and 10 of the Public Stores Act, 1875; and by s. 86 of the Public Health Amendment Act, 1907, where that Act is in force. If his course of dealing brings him within the definition of a "marine store dealer" (q.v.) he is also subject to ss. 538-542 of the Merchant Shipping Act, 1894. See MARINE STORE DEALER.

Old Michaelmas Day. The 12th October,

corresponding to the 29th September of the time before the reform of the calendar.

Old Midsummer Day. The 7th July, which corresponds to the 24th June of the period before the reform of the calendar, is still in some places a customary quarter-day. The actual expression "Old Midsummer Day" does not appear to be in use.

Old Rent. The same as accustomed rent (q.v.).

Old Style. See CALENDAR.

Old Tenures. A treatise, attributed to the reign of Edward III., dealing with the various tenures upon which land was held. It is called the *Old Tenures* to distinguish it from Littleton's well-known *Treatise on Tenures*.

Oleron, Laws of. This compilation, also known as the Rolls (or Lois or Jugements) of Oleron, derives its name from an island off the coast of the *département* of Charente Inférieure in France. It contains a collection of the customs of the sea which formed in the twelfth century something in the nature of a code of international maritime law for the Atlantic, corresponding to the Laws of Wisby (q.v.) for the Baltic and the Consolato del Mare (q.v.) for the Mediterranean. The compilation is alleged to have been made about 1150 by Eleanor of Aquitaine, then the wife of Louis VII. of France, and afterwards, in 1152, the wife of Henry II. of England. The earliest known copy, called *La Charte D'Oleroun des Juggements de la Mer*, and dating apparently from the fourteenth century, is contained in the *Liber Memorandorum* which is preserved in the Guildhall of the City of London. *The Rutter of the Sea*, by Thomas Petyt, printed in 1536, contains a translation entitled the *Laws of Ye Yle of Oleron & Ye Judgementes of Ye See*; this appears to have been made from the *Purple Book of Bruges*, which is a version slightly altered to give it a local Flemish colour. An earlier translation, by Robert Copland, had appeared in 1528.

See 37 *L. Q. R.* 326.

O.M. See MERIT, ETC.

Omne crimen ebrietas et incendit et detegit (*Co. Litt.* 247). (Drunkenness both aggravates and reveals every crime.) The loosening of the tongue resulting from over much drink does certainly often lead to the detection of criminals; but although drunkenness is no excuse for crime, it may preclude the formation of the intent which is necessary to constitute certain crimes. See DRUNKENNESS.

Omne jus aut consensus fecit aut necessitas constituit aut firmavit consuetudo (*D.* 1, 3, 40). (Either mutual consent has made, or necessity has established, or usage has fixed every rule of law.) This very sweeping statement of a Roman jurist does not apply accurately to our law.

Omne majus continet in se minus (5 *Rep.* 115). (The greater contains the less.) This, like *In majore, etc.*, is cited as an authority for the proposition that tender of a sum larger than a debt is good tender. See MAJUS CONTINET, ETC.

Omne quod solo inædificatur solo cedit (*I.* 2, 1, 29). (Everything which is built into the soil is merged therein.) But there are exceptions: See ÆDIFICATIO, ETC. See also QUICQUID PLANTATUR, ETC.

Omne sacramentum debet esse de certâ scientiâ (4 *Inst.* 279). (Every oath ought to be of certain knowledge). And so it has long been held to be perjury (q.v.) for a witness to give evidence as to a matter of which he knows nothing. This view is now confirmed by statute: see the Perjury Act, 1911, s. 1.

Omnes licentiam habent his, quæ pro se indulta sunt, renunciare (*C.* 1, 3, 51). (Every one has liberty to renounce those things which are granted for his benefit.) But there are exceptions to this rule: see, for instance, AGRICULTURAL HOLDINGS ACTS.

Omnes sorores sunt quasi unus hæres de unâ hæreditate (*Co. Litt.* 67). (All sisters are, as it were, one heir to one inheritance): for they all take as coparceners (q.v.).

Omnes subditi sunt regis servi (*Jenk. Cent.* 126.) (All subjects are the king's servants.) Quoted as a comment on a decision of the Exchequer that in an action of trespass or debt or in which outlawry lay, "servant" was not a good "addition" (q.v.); for, said the Court, "every man is a servant of the law and of the king."

Omne testamentum morte consummatum est (*Co. Litt.* 322; 3 *Rep.* 29). (Every will is completed by death): until the death of the testator it is of no effect.

Omnia delicta in aperto leviora sunt (8 *Rep.* 127). (All offences are less grave when they are committed openly.) But this statement is too sweeping; it scarcely applies, for instance, to indecent exposure. But the Legislature has, for instance, made poaching by day punishable with less severity than poaching by night.

Omnia præsumuntur contra spoliatorem (*Branch, Max.* 80). (All things are presumed against a wrongdoer.) This maxim, which is practically identical with IN ODIUM, ETC. (q.v.), embodies the grounds of the decision in the leading case of *Armory* v. *Delamire* (1 *Str.*

504): there it was held that where A had unlawfully detained jewels (of which only the size was proved) the property of B, then the jewels must—unless produced—be presumed to have been of the finest quality.

Omnia præsumuntur legitimè facta donec probetur in contrarium (*Co. Litt.* 232). (All things are presumed to have been legitimately done, until the contrary is proved.) See Ex DIUTURNITATE, ETC. Where there is question of official acts there is a rebuttable presumption that all necessary conditions, precedents and formalities have been complied with.

Omnia præsumuntur ritè et solemniter esse acta (*Co. Litt.* 6). (All things are presumed to be correctly and solemnly done—that is to say, until the contrary is proved.) See Ex DIUTURNITATE, ETC.

Omnia quæ jure contrahuntur, contrario jure pereunt (*D.* 50, 17, 100). (All things which are made by a law perish as the result of a contrary law.) Compare LEGES POSTERIORES, ETC.; NATURALE EST, ETC.

Omnia quæ sunt uxoris sunt ipsius viri; non habet uxor potestatem sui, sed vir (*Co. Litt.* 112). (All things which belong to the wife belong to the husband; it is not the wife but the husband who has control of the wife's property.) Compare UXOR NON, ETC. But see now MARRIED WOMEN'S PROPERTY.

Omnibus. For the purposes of the Town Police Clauses Acts, 1847 and 1889, the term "omnibus" when used in these Acts is defined in s. 3 of the Act of 1889. For the purposes of the Metropolitan Public Carriages Act, 1869, there is no definition of the term "omnibus": but the term "stage carriage" (q.v.), as defined in s. 4 of that Act, clearly includes everything known as an omnibus.

Omnibus pœnalibus judiciis et ætati et imprudentiæ succurritur (*D.* 50, 17, 108). (In all criminal proceedings assistance is given to age and imprudence.) That is to say, the rigour of the law is mitigated in the case of offenders who are of tender age or who, for any reason, have not such intent as is necessary to constitute a crime. Formerly the policy of our law was to hang felons even of tender years, and down to recent years a convicted murderer was almost invariably hanged unless he or she was a raving lunatic. All this is now changed. A murderer who is mad "but north-north-west" escapes even though there be method in his madness; and illustrations of the recent tendency of the law will be found under CHILDREN; FIRST OFFENDER; INFANTICIDE; PROBATION.

See also CATCHING BARGAINS.

Omnis actio est loquela (*Co. Litt.* 292). (Every action is a complaint.) And so, says Coke, a release of all *loquelæ* was a release of all *actiones*.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum (*Co. Litt.* 226). (Every conclusion arrived at in a proper and good judgment is the conclusion to be drawn from the premises that have been properly and reasonably found by the jurymen.) Coke is speaking of a special verdict. See VERDICT.

Omnis innovatio plus novitate perturbat quam utilitate prodest (2 *Buls.* 338). (Every innovation causes more confusion by what is new in it than good by what is useful in it.) At a public meeting on 7th November, 1922, the Prime Minister, Mr. Bonar Law, said, in connection with a proposed change in our fiscal system: "The advantage you would get by changing the system would not be as great as the disadvantage which would come from the disturbance it would cause." He had probably never even heard of *Bulstrode's Reports*: and what he said shows only that, in all ages the sensible man—whether it be Lord Coke in 1615 or Mr. Bonar Law in 1922—thinks on much the same lines.

Compare JUDICIS EST JUS, ETC.; MISERA, ETC.; VIA, ETC.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur (*Jenk. Cent.* 96). (If it be possible, deeds are to be so interpreted that all inconsistencies are got rid of.) Compare INTERPRETATIO TALIS, ETC.

Omnis nova constitutio futuris temporibus formam imponere debet, non præteritis (2 *Inst.* 95). (Every new law should regulate the future and not the past.) Compare LEGES ET CONSTITUTIONES, ETC.

Omnis privatio præsupponit habitum (*Co. Litt.* 339). (Every deprivation presupposes former possession.) Quoted in support of the proposition that an estate tail could not be discontinued except by one seised by force of the entail. See DISCONTINUANCE. Compare NEMO DAT, ETC.

Omnis querela et omnis actio injuriarum limitata est infra certa tempora (*Co. Litt* 114). (Every plaint and every action for injuries is limited within certain times.) Quoted from Bracton by Coke in connection with the common law rule as to time within the memory (q.v.) of living men.

Omnis ratihabitio retrotrahitur et mandato priori æquiparatur (*Co. Litt.* 207). (Every ratification of an act already done has a retro-

spective effect, and is equal to a previous request to do it.) Quoted in connection with the proposition that an unauthorised payment of a debt by a stranger is to be deemed payment by the creditor as on the date of actual payment if the creditor subsequently ratifies it. See RATIFICATION.

Omnium contributione sarciatur quod pro omnibus datum est (4 *Bing.* 121). (That which is given for all is made good by the contribution of all.) This is the principle on which the doctrine of general average is founded. See AVERAGE.

One Hundred Thousand Pound Clause. In a recovery (q.v.), or common recovery, it was at one time the practice for the tenant for life to convey to the tenant to the præcipe (q.v.) for the life of the tenant for life, subject to the proviso that, unless £100,000 should be paid on the day after the time within which the recovery was to be suffered, the use should cease. As the sum specified—it might be any sum—was always far in excess of the value of the estate, the effect of this proviso (known as "The one hundred thousand pound clause") was to work an avoidance of the estate of the tenant to the præcipe; and this avoidance in no way affected the validity of the recovery, it being necessary only that there should be a tenant to the præcipe when the recovery was suffered.

Oneranda pro ratione portionis, De. A writ which formerly lay for a joint tenant, or a tenant in common, who had been distrained for more rent than he was liable to pay.

Onerous. A contract, lease, share or other right, is said to be onerous when the obligations attaching to it counterbalance or exceed the advantage to be derived from it, either absolutely or with reference to the particular possessor.

As to disclaimer of onerous property by a trustee in bankruptcy, see DISCLAIMER.

"O. Ni." Coke explains this abbreviation as follows: "The course of the Exchequer is that as soon as a sheriffe or escheator enters into his account for issues, amerciaments and mean profits, to mark upon his head O NI, which is as much as to say, *Oneratur nisi habet sufficientem exonerationem*, and presently he is become the King's debtor and a *debet* set upon his head, and thereupon the parties *paravaile* are become debtors to the sheriffe or escheator and discharged against the King"—the effect of which seems to be that the sheriff, unless he could show cause to the contrary, became himself liable to pay the moneys that he was empowered to get in, but had his remedy over against those who should have paid such moneys.

On-licence. "In this Act, unless the context otherwise requires . . . the expression 'justices' on-licence' means a justices' licence for the sale of any intoxicating liquor for consumption on the premises" (Licensing (Consolidation) Act, 1910, s. 110).

Onus episcopale. See EPISCOPALIA.

Onus probandi. See PROOF.

Open. An open account means one which has not been stated or settled between the parties: see ACCOUNT SETTLED; ACCOUNT STATED. As to reopening accounts, see FALSIFY. As to reopening a foreclosure, see that title.

The trial or hearing of an action at *nisi prius* is commenced by the junior counsel for the plaintiff "opening the pleadings," that is, stating shortly the substance of them to the jury, after which the senior counsel for the plaintiff addresses the jury on the whole case. In the Chancery Division, the trial or hearing of an action commences with the speech of the plaintiff's senior counsel, which is called the opening. See REPLY.

Formerly where an estate had been sold under the order of the Court of Chancery, the Court was in the habit of "opening the biddings," that is, of allowing a person to offer a larger price than the estate was originally sold for, and of directing a resale accordingly. But this practice was abolished, except in the case of fraud or improper management of the sale, by the Sale of Land by Auction Act, 1867, s. 7.

See CONTRACT.

Open Court. See IN CAMERÂ.

Open Cover. An informal unstamped agreement by which a marine insurance company undertakes to issue a policy on cargo not yet shipped as soon as the cargo is actually shipped and the premium has been paid. The policy will be issued not only to the person who received the "open cover" but also to any person who produces it to the company. Effect is given as a matter of course to such agreements; but they cannot be enforced in law.

Open Fields or **Meadows** are fields which are undivided, but belong to separate owners; the part of each owner is marked off by boundaries until the crop has been carried, when the pasture is shared promiscuously by the joint herd of all the owners. See DOLE; LOT MEADOWS.

Open Policy. An unvalued marine policy: see POLICY.

Open Spaces. The law as to open spaces which have been placed under the management of trustees, with a view to the preservation and regulation thereof as open spaces, has been consolidated by the Open Spaces Act, 1906. Section 20 of that Act defines the meaning of the expression "open space." It is under this Act (see ss. 9-11), and the enactments (for which see the Schedule to the Act) repealed and replaced by it that local authorities have acquired and now control the many disused burial grounds which are used as recreation grounds in various cities and towns.

See also LOCAL IMPROVEMENTS.

Operarii. Tenants of small portions of a manor who held by the service of doing a stipulated number of days' work in the year for the lord.

Operatio. A day's work due to the lord by an *operarius*.

Operative Part. In a conveyance, lease, mortgage or other formal instrument, the operative part is that which carries out the main object of the instrument. Thus, in a conveyance or lease, the operative part consists of the operative words of conveyance or demise and the parcels; sometimes everything which follows the recitals (q.v.) is called the operative part, for the term has no fixed meaning. In a mortgage, the operative part consists of (1) the covenant for payment of the mortgage debt; (2) the conveyance of the mortgaged property; and (3) the proviso for reconveyance.

Operative Words. In the original sense of the phrase, operative words are words which have an operation or effect in the creation or transfer of an estate. Thus, in a gift of land to A and B and the heirs of the body of A, the word "heirs" is an operative word, because it creates an estate of inheritance in A; and the words "of the body" are operative words, because they limit an estate tail. (See HEIR.) More often, however, such words are called words of limitation (q.v.), and the term "operative words" is applied to those words which pass an estate. Thus, the words "enfeoff," "grant," "bargain and sell," "demise," "alien," "release," and "confirm," are or were used in conveyances of freehold land as operative words, that is, for the purpose of effecting an alienation of the land from the grantor to the grantee. See the various titles.

Opinion. The judgments delivered in the House of Lords by the Law Lords are technically known as "opinions." The mere expression of opinions by any judge as to matters not decided in a case are known as *dicta* (see DICTUM). The advice given by counsel upon the facts set out in a case submitted to him is known as an opinion; it is quite distinct from "Advice on Evidence" (q.v.).

See ADVICE OF COURT.

Opinion Evidence. See EVIDENCE.

Opium. See DRUGS, DANGEROUS.

Oportet quod certa res deducatur in judicium (*Jenk. Cent.* 84). (A thing which is certain must be brought to judgment); that is to say, there must be no doubt as to what precisely it is that the Court has to decide. Quoted in connection with a decision of the Exchequer as a double plea. See DUPLICITY.

Opposer. An officer of the Green Wax (q.v.) whose office was abolished before 1798; he does not appear in the list of Green Wax Officials at that time.

Oppression is the common law misdemeanour committed by a public officer, who, under colour of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury. In 1762 the offence was held to have been committed where justices refused licences to publicans who had not voted as the justices wished. Prosecutions for the offence are now unknown.

Optima est lex quæ minimum relinquit arbitrio judicis; optimus judex qui minimum sibi (*Bac. Aphor.* 46). (That system of law is best which confides as little as possible to the discretion of a judge; that judge the best who trusts as little as possible to himself.) This does not mean that a judge should be weak; what it does mean is that he should not rely upon his own views where there is law to guide him. Compare DISCRETIO EST, ETC.

Optima legum interpres est consuetudo (*Plow. Com.* 336). (Custom is the best interpreter of the law.) This is a maxim of the civil law which was quoted by Chief Baron Saunders—who said *optima*, not *optimus*—in 1568 in connection with the question whether the King was entitled to all mines of copper if the copper contained gold or silver (*Plowd.* 336). In 1874 the Court of King's Bench (L. R. 9 Q. B. 339) was manifestly influenced by the view embodied in the maxim when it declined to vary the construction which had always been put upon a statute of Queen Anne.

Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum (8 *Co.* 117; *Wing.* 239). (The best interpreter of a statute is (all the separate parts being

considered) the statute itself.) Compare INJUSTUM EST, ETC.

Optimus interpres rerum usus (2 *Inst.* 282). (The best interpreter of things is usage.) A wider form of *Optima legum*, etc. But evidence of usage is inadmissible to vary, though admissible to explain, a written contract; and evidence of the existence of a custom which is bad in law is never admissible. See MALUS USUS, ETC.: compare EX NON SCRIPTO, ETC.

Option. A lease of lands or houses may contain a provision that the lessee shall have the option of purchasing the property within a certain period, upon giving the lessor notice of his intention to exercise it. Such a notice constitutes a contract of purchase, the specific performance of which may be compelled. The exercise of an option relates back to the date of the lease or other instrument by which it was given, so as to operate a constructive conversion of the property from that date. If, therefore, the lessor (being a freeholder) should die intestate before the option is exercised, the reversion will pass to his heirs; but when the option is exercised, the reversion will become personal property, and pass away from the heir to the next of kin of the deceased. See ELECTION.

In ecclesiastical law, an archbishop had a customary prerogative to name a clerk or chaplain of his own, to be provided for by each bishop of his province who was consecrated by him. In lieu of this right, it was usual for the bishop to make over by deed to the archbishop the next presentation of such dignity or benefice within the bishop's see and disposal, as the archbishop should choose: hence, this was called his option. This privilege was incidentally abolished by the Ecclesiastical Commissioners Act, 1840, s. 42, which forbade a spiritual person to assign any patronage or presentation belonging to him by virtue of his office.

As regards commercial transactions, an option is the privilege (acquired for a consideration) of calling for delivery or of making delivery of, or both, within a specified time, of some particular stock or article at a specified price to a specified amount. An option is valid if—which is not always the case—it is intended that the stock or article shall actually change hands. Options must be stamped as contract notes (Finance (1909-10) Act, 1910, s. 79 (1)).

Optional Writ. Formerly this was the name of any original writ which commanded the defendant to either do a thing or else show cause why he had not done it.

Ora. A Danish coin introduced into England by the Danish invaders. From the Laws of Edward the Elder and Guthrum (*circa* 920), c. 7, it would appear to have been at one time worth something like thirty pennies. In Domesday Book the word is used as meaning an ounce.

Orando pro regne et regno. Before the Reformation it was customary for a new Parliament to petition the King to require the clergy to offer up prayers for the kingdom and for a good understanding between the King and the Parliament; and thereupon the writ *De orando pro rege et regno* (to pray for the King and the kingdom) was issued to the clergy.

Orator; Oratrix (from Latin, *orare*, to pray) were the names for a male and female plaintiff in a Chancery suit before the statute 15 & 16 Vict. c. 86.

Ordeal. The most ancient species of trial was that by ordeal, which was distinguished by the appellation of *judicium Dei*, and sometimes by that of *vulgaris purgatio*, to distinguish it from the canonical purgation, which was by the oath of the party. It was of two kinds: fire ordeal and water ordeal; the former being confined to persons of rank, the latter being open to the common people. Fire ordeal was performed either by taking up in the hand a piece of red-hot iron of one, two, or three pounds' weight, or else by walking barefoot and blindfold over nine red-hot plough-shares laid lengthwise, at unequal distances, and if the party escaped unhurt he was adjudged innocent; if otherwise, he was condemned as guilty. Water ordeal was performed either by plunging the bare arm up to the elbow in boiling water, or by casting the suspected person into a river or pond of cold water; and if in the former instance his arm was unburnt, or if in the latter instance he floated without any effort to swim, it was deemed evidence of his innocence; if otherwise, of his guilt. The ordeal was abolished in the reign of Henry III., when the more rational process of trying the guilt or innocence of an accused person by means of compurgation (q.v.) was substituted for it.

See APPEAL OF FELONY; BATTLE, TRIAL BY.

Ordel. Ordeal.

Ordelf; Oredelf. Used in old charters as meaning the right to mine for metals on one's own land.

Order. In its simplest sense, an order is a mandate or direction. Thus, bills of ex-

change, cheques, etc., are said to be drawn to order when the payee is entitled to transfer the right to claim payment to any person whom he may direct. See BILL OF EXCHANGE; BEARER; DELIVERY ORDER; NEGOTIABLE.

More commonly, however, order signifies a direction or command by a Court of judicature, and directions or commands termed "rules" are included in "orders" (Judicature Act, 1873, s. 100). As a general rule, "order" is opposed to "judgment," and therefore denotes (i) orders made in summary proceedings on petition or summons (see SUMMARY), and (ii) orders made in actions on interlocutory applications, whether before or after final judgment (see INTERLOCUTORY). Such are the ordinary orders for discovery and production of documents, orders for time, etc., made in the course of almost every action. In the practice of the King's Bench Division, an order to show cause, or order *nisi*, is an order obtained by one party on an *ex parte* application, and calls on the other party to show cause within a certain time why a certain order should not be made; and then the order is either discharged or made absolute. The order to show cause is not granted unless the applicant has a *primâ facie* case. But now Ord. 52, r. 2, provides that no application for a rule (q.v.) *nisi* or order to show cause shall be made in any action, or to set aside, remit or enforce an award, or for attachment, or to answer the matters in an affidavit, or to strike off the rolls, or against the sheriff to pay money levied on an execution; and this, together with r. 3 (see MOTION) of the same Order, has very much reduced the number of applications for orders *nisi*; but they may still be made in a few cases, as, for instance, for the assignment of an administration bond in order that it may be sued on, and (Crown Office Rules, r. 235) all applications on the Crown side, made by motion to a Divisional Court, are to be for an order *nisi*. See RULE

As to orders of course, see OF COURSE.

Orders are also issued by subordinate legislative authorities. Such are Orders in Council, or orders issued by the Privy Council in the name of the King, either in exercise of the royal prerogative or in pursuance of an Act of Parliament. The Rules of Court under the Judicature Act are grouped together in the form of orders, each order dealing with a particular subject-matter. See RULE.

Order and Disposition. The "order and disposition section" of the Bankruptcy Act, 1914, is s. 38: it is that on which the doctrine of reputed ownership rests. It is so called from its containing the provision that all goods being at the commencement of the bankruptcy in the possession, order or disposition [that is, in the possession or apparent control] of the bankrupt in his trade or business, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, shall be divisible amongst his creditors: the section, however, provides that choses in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of the section. See REPUTED OWNERSHIP; POSSESSION.

Order in Council. This is an Order made by the King "by and with the advice of His Majesty's Privy Council"; or an Order of a Colonial Viceroy with the advice of the Privy or Executive Council of the British Colony or Possession to which the Order relates.

Some Orders in Council come within the class of Statutory Orders (q.v.), that is to say, of Orders made under statutory authority. The issue of Orders in Council is expressly authorised by various modern statutes, the effect of this authorization being to give the Government a power to legislate, subject in many cases to the right of Parliament to nullify the Order in Council by an address disapproving thereof.

Other Orders in Council are made by virtue of the royal prerogative (q.v.). Thus the Civil Service of the United Kingdom is regulated by Orders in Council made under the prerogative.

Order of Council. An Order *in* Council (q.v.) is an Order made by the Sovereign by and with the advice of the Privy Council: an Order *of* Council is an Order made by the Privy Council without the concurrence of the Sovereign.

The Municipal Corporations Act, 1883, s. 6, provided for the issue of Orders of Council: but the section has never been acted on. The Acts relating to dentists, medical men, chemists and veterinary surgeons, however, contain provisions which authorise the issue of Orders of Council for certain purposes (see, for instance, s. 31 of the Dentists Act, 1878) and are, in fact, availed of.

Order of Reference. In the practice of the King's Bench Division, when an interlocutory judgment (*e.g.*, by default) is obtained in an action brought for a sum which, though unascertained, is "substantially a matter of calculation" (*e.g.*, for principal and interest),

the Court or a judge may refer it to an officer of the Court to be ascertained (Ord. 36, r. 57). Before the Judicature Acts a matter could in a like case be referred to one of the Masters under s. 94 of the Common Law Procedure Act, 1852. See INQUIRY; INQUIRY, WRIT OF.

Orders, Holy. See HOLY ORDERS.

Orders other than of Knighthood. See MERIT; COMPANION OF HONOUR; and DISTINGUISHED SERVICE. See also IMPERIAL SERVICE; VICTORIA AND ALBERT; CROWN OF INDIA; SAINT JOHN—which are all Orders of a sort.

Ordinance.—According to Coke, "the difference between an act of parliament and an ordinance in parliament, is, for that the ordinance wanteth the threefold consent [of lords, commons, and crown], and is ordained by one or two of them" (4 *Inst.* 25). The enactments which were passed during the period between the outbreak of the Civil War and the Restoration (1642-1660) were all passed without the consent of the Crown, and are known as ordinances. According to other old writers, an ordinance was in the nature of a declaration by the Crown in answer to a petition by the Commons, on a question as to the law applicable to a given case, while a statute was an enactment of new law. In modern times the term ordinance is applied to the instrument by which the King creates a new order of knighthood, and to what correspond in Crown Colonies to Acts of Parliament here and in the self-governing colonies.

Ordinance of the Forest. The same as ORDINATIO FORESTÆ (q.v).

Ordinary is the bishop of a diocese when exercising the ecclesiastical jurisdiction annexed to his office, he being *judex ordinarius* within his diocese. See BISHOP.

The name was also applied to the chaplain of Newgate, whose principal duty was to prepare condemned prisoners for death. There was also formerly an Ordinary of Assize and Sessions, who attended on behalf of the bishop to ascertain whether claimants of benefit of clergy (q.v.) could read the "neck-verse" (q.v.). See JUDGE ORDINARY.

Ordinatio forestæ. This title was applied to the statutes 33 Edw. 1, statute 5, and 34 Edward 1, statute 5, each of which related to the forest law.

Ordination is the ceremony by which a bishop confers on a person the privileges and powers necessary for the execution of sacerdotal functions in the Church. He thereby becomes a clerk in Holy orders, and capable of being presented and admitted to a benefice. (See ADMISSION; BENEFICE; RECTOR; VICAR.)

Ordinatione contra servientes, De. A writ which anciently lay against a servant for leaving his master contrary to the Statute of Labourers, 23 Edw. 3.

Ordnance, Board of. This was a body of officials which from the sixteenth century provided the munitions of war required for the army and the navy, and more especially for the navy, the army until after the Restoration having no regular establishment in time of peace. The head of the Board was the Master of the Ordnance (q.v.), who afterwards developed into the Master-General of the Ordnance. The Board grew into an important separate department. For many years before 1828 the Master-General of the Ordnance was a member of the Cabinet, and necessarily a member of one House of Parliament or the other. Up to 1855 the Board remained independent of the Secretary of War, and was represented in Parliament by two of its members. In 1855 its powers were transferred to the Secretary of War by the Ordnance Board Transfer Act, 1855. The Army Ordnance Corps now carries out under the direction of the Secretary of State for War work which would have been allocated to the Board.

Ordnance Debentures. Bills payable by the treasurer of the Board of Ordnance which that body formerly issued in payment for stores, etc., purchased by them.

Ordnance Survey. This is an accurate and authoritative survey of the United Kingdom, made under the authority of the Ordnance Survey Act (4 & 5 Vict. c. 30). The work was originally entrusted to the Ordnance Board (q.v.), from whom it passed in 1855 to the Secretary of State for War, in 1870 to the Commissioners of Works (under the Survey Act, 1870, and in 1889 to the Board of Agriculture (under the Board of Agriculture Act, 1889). The actual work has been done by the Royal Engineers. Maps of the entire country, prepared from the survey, have been made on various scales. They are not evidence. For definition of the term "ordnance map," see the Interpretation Act, 1889, s. 25.

Ore tenus means orally. See DEMURRER.

Orfgild. According to Lambarde, this was compensation made by the hundred or county for any wrong done by a member of a frankpledge.

Orgild. According to Spelman, this meant "without compensation."

Origin. A declaration as to the place in

which goods were manufactured or grown, made before a prescribed person by a shipper of the goods before they are actually shipped, is known as a certificate of origin. This must be produced in most foreign countries before the goods can be unloaded. It is obviously necessary in countries whose duties vary according to the origin of goods.

As to domicile of origin, see DOMICILE.

Original. See CONVEYANCE; EVIDENCE; TITLE; WRIT.

Originalia Rolls. Rolls running from 1236 to 1837, in which were recorded the estreats sent from the Chancery to the Exchequer. They are now in the Record Office.

Originating Summons. See SUMMONS.

Origine propriâ neminem posse voluntate suâ eximi manifestum est (*Cod.* 10, 38, 4). (It is manifest that no one is able, of his own will, to get rid of his proper origin.) No one could at common law divest himself of his natural allegiance. As to the present law, see NATURALIZATION.

Compare NEMO PATRIAM, ETC.

Ornaments Rubric. This is the rubric (q.v.) in the Book of Common Prayer (1662) which directs that "such Ornaments of the Church and of the Ministers thereof . . . as were in this Church of England by the Authority of Parliament in the Second Year of the reign of King Edward the Sixth" shall be used.

Orphan. A minor without a living parent. It is sometimes used as meaning a minor who has lost one parent.

The Lord Mayor and Aldermen of the City of London, sitting in their Court of Orphans, are by custom the guardians of the persons and property of the minor children of a freeman who—as now seldom happens—has died in the City. Apart from this special case, the Lord Chancellor is the guardian, not merely of orphans, but of minors generally.

Ortelli. The claws of a dog's foot: used in connection with forest law.

Osborne Morgan's Act. A popular title of the Burial Laws Amendment Act, 1880.

Os demonstrat quod cor ruminat (3 *Buls.* 260). (The mouth shows what it is that the heart is thinking.) Compare SERMO EST, ETC.

"Oswald's Law." The popular title of a law made by King Edgar about 964 at the suggestion of St. Oswald, the bishop of Worcester. During the anarchy produced by the Danish invasions, the parochial clergy had become to a large extent non-celibate and the monasteries had in many cases been broken up. Under Oswald's law, celibacy became again the rule amongst the clergy and the monks were restored.

Oswald's Law Hundred. According to Camden, this was a hundred in Worcestershire containing about 300 hides of land which St. Oswald obtained from King Elgar as an endowment for St. Mary's Church in Worcester. It was exempt from the sheriff's jurisdiction.

Otter. A small board weighted on one edge so that it floats upright, which is attached to a line in the same way that an ordinary kite is attached to the string. When pushed out from the bank of a lake or river it works through the water parallel to anyone walking along the bank and holding the line. On the line are flies to catch fish. The use of any otter (or of various other poaching instruments) for the capture of salmon or trout is prohibited by the Salmon Fishery Act, 1861, s. 8 (2) and the Salmon Fishery Act, 1873, s. 18 (1).

See s. 4 of the Act of 1873.

Oulter le mer. (Beyond seas.) This was one of the recognised essoins (q.v.).

Ounce. The ounce consists of one-sixteenth part of the imperial standard pound (Weights and Measures Act, 1878, s. 14). It therefore consists of 437½ grains. As to other ounces, see TROY WEIGHT; APOTHECARIES' WEIGHT.

Oust; Ouster. To oust a person from land was to take the possession from him so as to deprive him of the freehold. An ouster might be either rightful or wrongful. A wrongful ouster was a disseisin (q.v.).

Blackstone divides ouster into abatement, intrusion, disseisin, discontinuance and deforcement; he also applies the term to chattels real, but this use of the word does not seem to be warranted by the old writers. See DEFORCEMENT.

Ousterlemain was a writ directing the seisin or possession of land to be delivered out of the hands of the Crown into those of a person entitled to it. It was the mode by which an heir in ward of land held of the Crown *ut de honore* obtained possession of it on attaining majority. (See WARDSHIP; LIVERY.) Ousterlemain also meant a judgment on a *monstrans de droit*, deciding that the Crown had no title to a thing which it had seized. See AMOVEAS MANUS; CAPITE; TENURE IN.

Ouster le mer. This is a misprint in Cowell (1607) for OULTER LE MER (q.v.), and it has been printed in one law dictionary after another for the last three hundred years without regard to the fact that except in the dictionaries there never was such a form of words.

Outas = Utas (q.v.).

Outcry. Used in the seventeenth and eighteenth centuries as a synonym for auction. See OUTROPER.

Outfangtheft. The franchise of outfangtheft, according to Britton, was the right of a lord to bring into his own jurisdiction and to hang upon his own gallows one of his own men who had been condemned for theft by someone else. Bracton and Fleta, on the other hand, say that it meant the right of the lord to try thieves who had come into the lord's jurisdiction after stealing elsewhere; and Rastell (1579) says that it meant the right of the lord to bring back into his jurisdiction and to try there any man of his own who had stolen elsewhere. Compare INFANGTHEFT.

Outland. In Saxon times this meant the parts of a manor or estate which were let to tenants: inland meant the part—corresponding to the modern demesne and home-farm—which the lord retained for his own use.

Outlaw is a person who is put out of the protection of the law by judgment of outlawry (q.v.) See WAIVED. The word outlaw is derived from the Anglo-Saxon, *ûtlaga*, *ûtlah*, = out of the law. (See UTLAWRY.) "In the reign of king Ælfred," says Coke, "and until a good while after the Conquest, no man could have been outlawed but for felonie, the punishment whereof was death. . . . But in the beginning of the raigne of king Edward the third, it was resolved by the judges, for avoyding of inhumanity and of effusion of Christian blood, that it should not be lawfull for any man, but the sherife onely (having lawfull warrant therefore) to put to death any man outlawed, though it were for felonie" (*Co. Litt.* 128*b*) Up to then an outlaw was *caput lupinum* (q.v.). See WAIF.

Outlawry. Where an indictment has been found against a person and summary process (see PROCESS) proves ineffectual to compel him to appear, process of outlawry may be issued, though in practice this is never done. The preliminary process of issuing successively writs of *venire facias ad respondendum*, *distringas* and *capias ad respondendum* (see those titles), is first gone through; and if the defendant still eludes justice, a writ of *exigent* is awarded, by which the sheriff is required to proclaim the defendant and call him on five County Court days (of the old Sheriff's County Court) one after another upon pain of outlawry: a writ of proclamation is also issued and executed. If the defendant still fails to appear, judgment of outlawry is pronounced by one of the coroners for the county: judgment may also be signed in the Crown Office, and a *capias utlagatum* (q.v.) issued. See QUINT-EXACT.

The effect of outlawry seems to be that the outlaw becomes liable to imprisonment, forfeits his property to the Crown (his goods immediately and his chattels real and the profits of his land upon office found) (see OFFICE), is incapacitated from maintaining civil proceedings, and becomes subject to other disabilities (see ATTAINDER).

Formerly there were also two kinds of outlawry in civil proceedings, one (called outlawry on mesne process) which was used to compel a defendant to appear in an action, the other (called outlawry after judgment) which was a means of execution to enforce a judgment. The former was abolished by the Common Law Procedure Act, 1852, s. 24; the latter by the Civil Procedure Acts Repeal Act, 1879, s. 3.

Outparters. The same as outputters (q.v.): the latter seems to be the correct form of the word.

Outpenny. See INPENNY.

Outputters. These were persons in the franchise of Redesdale who maintained and equipped robbers operating in the adjacent counties of Northumberland, Cumberland and Westmorland: see the statute 9 Hen. 5, st. 1, c. 7, and compare INTAKERS.

Outriders. Described by Jacob (1739) as "bailiffs errant" employed by sheriffs to summon persons to the old County Court: mentioned in the statute 14 Edw. 3, c. 9.

Outrooper; Outroper. An auctioneer. This was at one time a title of the officer of the City of London now known as the Common Crier and Serjeant-at-Arms. "We do . . . create in . . . the said City . . . a certain office, called outroper or Common Crier . . . for the selling of household stuff, apparel, leases . . . and other things . . . by open and public claim, commonly called outcry and sale," says Charles I. in the charter of 1638.

Outstanding. Where land is vested in a trustee or mortgagee, the *cestui que trust* or mortgagor can only deal with the beneficial or equitable interest, the legal estate in the land being, as it is said, outstanding in the trustee or mortgagee. If the trust or mortgage is satisfied without the legal estate being revested in the *cestui que trust* or mortgagor, and he contracts to sell the land, the purchaser may require him to get in the legal estate, that is, to obtain a reconveyance of it from the trustee or mortgagee.

As to outstanding terms, more often called attendant terms, see TERM.

Outstroke. The right of conveying minerals to the surface from one mine through another mine is known (as regards the mine through which the minerals are brought) as outstroke and (as regards the mine from which the minerals are brought) as instroke.

Over. In conveyancing, the word "over" is used to denote a contingent limitation intended to take effect on the failure of a prior estate.

Thus, in what is commonly called the "name and arms clause" (q.v.) in a will or settlement, there is generally a proviso that if the devisee fails to comply with the condition the estate is to go to someone else; this is a limitation or gift over. See PLEAD.

Overdue. A bill of exchange is overdue when the time fixed for its payment is passed. Such a bill is subject to the peculiar rule, that anyone taking it takes it subject to the equities of prior holders. (See BILL OF EXCHANGE; EQUITY.)

An overdue ship is one of which news has not been received for such a time as to give rise to the presumption or probability that she has been lost.

Overhernissa. In Anglo-Saxon times this meant either contumacy or a forfeiture.

Overreaching Clause, in a resettlement, is a clause which saves the powers of sale and leasing annexed to the estate for life created by the original settlement, when it is desired to give the tenant for life the same estate and powers under the resettlement. The clause is so called because it provides that the resettlement shall be overreached by the exercise of the old powers. If the resettlement were executed without a provision to this effect, the powers annexed to the estate for life created by the original settlement would be gone after the resettlement: but this is not now a matter of much importance because the powers given to a tenant for life by the Settled Land Acts, 1882 to 1890, remain notwithstanding the resettlement; and the clause is therefore frequently omitted, although it is, on the whole better to insert it. See RE-SETTLEMENT.

Overriding Trust. A trust which takes precedence of other trusts previously declared.

Oversamessa. In early times this meant a fine for failure to pursue a robber or a murderer.

Overseers. The statute 14 Eliz. c. 5, created the office of overseer in order that they might assist the churchwardens in the care of the poor. The Poor Relief Act, 1601, repealed the sections of the Act of Elizabeth which related to overseers, and provided that in every parish two or more justices living in or near the parish should annually nominate under their hands and seals the churchwardens, and from two to four householders of the parish, to be overseers of the poor. The Poor Law (Overseers) Act, 1814, provided that the nomination should be made on 25th March or within fourteen days thereafter. Such nomination is still the method of appointing overseers in places to which the Local Government Act, 1894, does not apply. Such places are not now common. Under s. 5 (1) of the Act of 1894 the power of appointing is now vested in the council of every rural parish having a parish council; under s. 19 (5) it is vested in the parish meeting of a parish which has no parish council; and under s. 33 of the same Act the Local Government Board (now the Ministry of Health) may confer on the council of any municipal district which so desires the power of making the appointment. Churchwardens are no longer overseers of the poor in rural parishes (Act of 1894, s. 5 (2)).

Overseers were originally entrusted not merely with the levying of poor rate but also with its expenditure; but the latter duty is now in the hands of Guardians of the Poor (q.v.) except (Poor Law Amendment Act, 1834) in cases of emergency. In addition to their duties in connection with the poor, overseers are entrusted with a multiplicity of other functions connected with matters so different as the registration of voters and the burial of bodies cast up by the sea.

Formerly it seems to have been common for a testator after appointing an executor to appoint an overseer, who had no power to intermeddle with the administration, but only to counsel, persuade and advise the executor. This is now obsolete.

Overt Act is an open act, or one consisting of something stronger than mere words, and evidencing a deliberate intention in the mind of the person doing it. The phrase is chiefly used in the law of treason, it being a rule that a treasonable intention is not punishable unless it is evidenced by some overt act. Thus, to provide weapons or ammunition for the purpose of killing the King, or to assemble and consult on the means of doing so, is an overt act of treason: but the mere speaking of words is not an overt act.

The term is also used in the law of criminal conspiracy to signify any act done by conspira-

tors in pursuance of their intention; the unlawful agreement of which the conspiracy consists constitutes an overt act.

Owe; Owing. To owe a sum of money is to be under an obligation to pay it either at once or at some future time, and such a debt is said to be "owing" as opposed to "payable." See DUE.

Owelty. (Equality.) Where an exchange of two pieces of land of unequal value is made, and a sum of money or some other compensation is given by the owner of the less valuable land to the owner of the other land, this compensation is said to be given for owelty of exchange, that is, to equalise the value. So, where a partition is made of property, which cannot be divided, into shares of equal value (as where two houses descend to coparceners, one being worth ten shillings, the other twenty shillings per annum), the partition may be made on the terms of the person to whom the property of greater value is allotted giving something by way of owelty of partition to the other: as in the case supposed, by the parcener to whom the house worth twenty shillings per annum is allotted granting a rent-charge of five shillings per annum to the other, or paying him a lump sum.

Owlers; Owling. In popular phraseology, owlers were people who carried exported wool in contravention of the statute 14 Chas. 2, c. 18, s. 8, and owling was the offence which they committed by so doing.

"Owner's Risk." See RISK.

Ownership is the most extensive right allowed by law to a person, of dealing with a thing to the exclusion of all other persons, or of all except one or more specified persons. It is therefore a right *in rem*. (See RIGHT.) Ownership is essentially indefinite in its nature, but in its most absolute form it involves the right to possess and use or enjoy the thing, the right to its produce and accessions, and the right to destroy, encumber, or alien it: or, as the civilians express it, ownership gives the *jus utendi, fruendi, et abutendi*; but the exercise of these rights may be restricted in various manners, and the owner may part with them or limit them in favour of other persons; so long, however, as the grantees have only definite rights of user over the thing, and the original owner retains an indefinite right, he is still owner; but if he parts with the indefinite right and retains only a definite one (*e.g.*, a right of way, in the case of land), he ceases to be owner. Ownership may exist either in corporeal or incorporeal things. Thus, a man may be owner of an annuity, patent, or copyright, as well as of land or furniture.

I. With reference to the right of user and alienation, ownership is either absolute (*dominium plenum*), or not (*minus plenum*).

Ownership is said to be absolute when it is subject only to those restrictions which are imposed by law on all owners, and are therefore implied in the idea of ownership. These restrictions may arise from the duties of the owner of the thing towards his neighbours and the world at large, which forbid him to make it hurtful or dangerous to those who happen lawfully to come into contact with it. (See NATURAL RIGHTS; NUISANCE.) Restrictions on alienation exist in the case of persons under disability, and are also imposed by the rule against perpetuities and the Mortmain Acts (q.v.). In English law absolute ownership can only exist in chattels, as all land is subject theoretically to the obligations of tenure; but practically the fee-simple in land gives absolute ownership. See ESTATE; FEE; TENURE.

Restricted ownership occurs where either concurrent or successive rights of user are vested in persons other than the owner; thus land may be subject to easements or rights of common (q.v.), or the right of user possessed by the owner for the time being may be restricted by the fact that he has only a limited interest in it, as in the case of a joint tenant, tenant for life, or lessee. See WASTE.

II. Ownership may be divided among several persons in various manners, so that each is owner to a limited extent, either successively, *i.e.*, one after another, or concurrently, *i.e.*, at the same time. These divisions are called modes of ownership. Hence we obtain the following classes of owners. As to its duration, ownership may be (1) absolute or unlimited (*dominium perpetuum*), as in the case of an estate in fee-simple, or (2) limited (*dominium temporale*), that is, liable to determine at a certain time or on the happening of a given event, as in the case of a lessee or tenant for life. As to the time of enjoyment, ownership may be present, as in the case of an estate in possession, or deferred, as in the case of an estate in reversion or remainder. (See ESTATE.) Ownership is called sole or several, where one person only is entitled to the thing at the same time. Concurrent ownership, where several persons are entitled to the thing at the same time, takes the form either (1) of co-ownership, or (2) of nominal and beneficial ownership. Co-ownership occurs where several

persons are entitled to the possession, user and benefit of one thing, *pro indiviso*, no one being entitled to any specific part of it, and the right of user of each being subject to a similar right in the others; as in the case of joint tenancy, coparcenary and tenancy in common (q.v.). Nominal and beneficial ownership occurs where two persons are owners in respect of one thing, although one of them either cannot derive any benefit from it at all, or has only exactly defined rights over it, while the other has the real benefit of the thing. Each is considered owner for certain purposes. Thus, a person (A) may be owner of a thing as against all the world, except another person (B), while with regard to that person he may have no rights of ownership at all, being bound, by virtue of a personal relation between them, to allow him to have the use and profits of the property, or even to deal with the property as he may direct. As the rules of the common law only recognise A's rights to the property and ignore those of B, A is called the legal owner, while B is called the equitable owner, because his rights are only recognised by virtue of the doctrines of equity. The legal owner is the nominal owner, the equitable the beneficial owner. (See EQUITY; MORTGAGE; TRUST.) So, if the owner of land grants a lease of it for 1,000 years, his ownership becomes practically nominal, while the lessee acquires the beneficial ownership.

As to general and special, ordinary and privileged, ownership, see PROPERTY.

See further as to ownership, ESTATE; INTEREST; RIGHT; TITLE.

Oxgang; Oxgate. As much land as one ox could plough in a year. The plough team contained eight oxen: the land which they could plough in one year was known as the carucate (q.v.); and the oxgang was one-eighth part of the carucate, it being taken that the one ox could plough one-eighth part of the land which the whole team could plough. But a single ox never ploughed alone; and the oxgang was really so much land as a single ox ought, in theory, to plough. See LIBRATA TERRÆ.

Oyer. In the old common law practice, a defendant was said to demand or crave *oyer* of a deed pleaded by the plaintiff when he asked that it should be read to him, the generality of defendants in early times being incapable of reading themselves; the record then generally went on to set out the deed in full as having been read to the defendant. This copy or setting out of the deed was also called the oyer. See PROFERT.

Oyer was used in the reign of Edward I. as meaning an assise.

Oyer and Terminer. The commission of oyer and terminer is the commission which is issued to certain judges of the High Court and other persons as their authority to "inquire, hear, and determine" all treasons, felonies, and misdemeanours committed within the county into which they are sent. This commission only authorises them to proceed upon an indictment found at the same assizes, for they must first "inquire" by means of the grand jury, before they can "hear and determine" by the help of the petty jury. (See JURY.) Their power to try other prisoners is conferred by the commission of gaol delivery (q.v.). (See ASSISE; CENTRAL CRIMINAL COURT; GAOL DELIVERY.) "Oyer and terminer" is old French for "hear and determine."

Oyer de Record. (Hear of the record.) Formerly this was a petition that the Court, for greater certainty, should refer to any record which was relied on in a proceeding.

Oysters. Oysters in oyster-beds are protected by s. 26 of the Larceny Act, 1861. See also the Sea Fisheries Act, 1868, Pt. III., and the statutes mentioned under CRABS and LOBSTERS.

P

P.A. Particular average. See AVERAGE.

Package. Duties known as package, scavage, balliage, and porterage had been levied in the port of London for hundreds of years on goods exported or imported by aliens or by denizens (q.v.) who were the sons of aliens, under the authority of charters granted by Edward IV. and Charles I., until they were abolished, at an expense of about £140,000, under the statute 3 & 4 Will. 4, c. 66.

"Packed Parcel." This is a parcel containing several smaller parcels each addressed to a different consignee, which, when the packed parcel reaches its destination, will be sent on to those different consignees. A railway company cannot charge a higher rate for "packed parcels" than for other parcels, nor can it charge varying rates to the consignors of "packed parcels"; and thus the sender of a "packed parcel," even if he himself is a common carrier, can secure the carriage of the smaller parcels in a "packed parcel" at a cheaper rate than if he sent each of them

separately, for the rate charged in respect of a "packed parcel" will be less than the aggregate rate for the parcels contained therein if they are sent separately.

Packway. A way along which there was a right of leading pack-horses. See BRIDLEPATH.

Pacta conventa quæ neque contra leges neque dolo malo inita sunt omnimodo observanda sunt (*C.* 2, 3, 29). (Compacts which are not illegal, and do not originate in fraud, must in all respects be observed.) Even for the purposes of our law this maxim is more accurate than Coke's MODUS ET, ETC. (q.v.)

Pacta dant legem contractui (*Halk.* 118). (Agreements constitute the law of the contract.) Provided that they are not illegal. See MODUS ET, ETC.

Pacta privata juri publico derogare non possunt (7 *Rep.* 23). (Private compacts cannot derogate from public right.) Compare CONVENTIO, ETC.

Pacta quæ contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere, indubitati juris est (*C.* 2, 3, 6). (It is undoubted law that agreements which are contrary to the laws and constitutions, or contrary to good morals, have no force.) See MODUS ET, ETC.; PRIVATORUM CONVENTIO, ETC.

Pacta quæ turpem causam continent non sunt observanda (*D.* 2, 14, 27). (Agreements containing a disgraceful cause are not to be observed.) As has been said by an American jurist, "Wherever the consideration, which is the ground of the promise, or the promise which is the consequence or effect of the consideration, is unlawful, the whole contract is void." Compare ALLEGANS TURPITUDINEM, ETC.; EX DOLO, ETC.

Pactis privatorum juri publico non derogatur (No derogation from public right is effected by agreements between individuals.) Used by counsel in 4 *Cl. & F.* at p. 211 as equivalent to PACTA PRIVATA, ETC. (q.v.).

Pains and Penalties. See BILL OF PAINS AND PENALTIES.

Paintings. See COPYRIGHT.

Pais. See IN PAIS.

Palace Court. This Court was established under letters patent granted by James I., Charles I., and Charles II. It had jurisdiction in personal actions to any amount within twelve miles of Whitehall, except as regards actions arising in the city of London or actions within the jurisdiction of the Court of the Marshalsea (q.v.) or of the Courts at Westminster; but cases of importance were generally removed into the King's Bench or Common Pleas. The judges were the Steward and the Marshal of the King's Household—neither of whom ever sat—and the Steward of the Court (or deputy). The deputy was a barrister and the sole real judge. It was an extremely unsatisfactory tribunal. The statute 12 & 13 Vict. c. 101, ss. 13-17 made an end of it; and its work has since been done by the County Courts.

Palace of Westminster. The official designation of the block of buildings containing the Houses of parliament, the many offices connected with them, and the residences of various officers of the two Houses. The buildings are theoretically a royal palace in which the Houses are permitted to meet.

Palatine Courts formerly were the Court of Common Pleas at Lancaster, the Chancery Court of Lancaster, the Chancery Court of Durham, and the Courts of Pleas at Durham (the second and third of which still exist), and the Courts of the County Palatine of Chester (which were abolished by the Law Terms Act, 1830). See CHANCERY; COUNTY PALATINE; COURT; COURT OF PLEAS.

Pallio cooperire. To cover with the *pallium*. It is stated, on the authority of Robert Grosseteste, the famous bishop of Lincoln (1175-1253), that in his time, at the marriage of persons with children born before the marriage, it was the custom for the parents and the children to stand beneath a cloth, or *pallium*, spread over their heads *in signum legitimationis* (to signify the legitimation of the childen). The statement is made in the *Epistolæ Roberti Grosteste*, printed as vol. 25 of the *Chronicles of Great Britain and Ireland*, London, 1861: see *Epist. XIII.*, which was written in 1236 (the year that the barons—see MERTON, STATUTE OF—declined to permit *ante-nati* (q.v.) to be legitimated by a subsequent marriage), in the hope of getting the barons to make the marriage law of England the same as that of the Church.

Palmer's Act. The popular title of the Central Criminal Court Act, 1856 (see CENTRAL CRIMINAL COURT) which was passed specially for the purpose of securing a fair trial for William Palmer, a poisoner, against whom there was a strong local feeling in the provincial town at which, in the absence of special legislation he would necessarily have been tried.

See HINDE PALMER'S ACT.

Palmistry. The telling of fortunes from the lines on the palm of the hand. It seems to have been introduced into England by the gypsies (see EGYPTIANS), who are described in

the statute 22 Hen. 8, c. 10, as practising it. Under the Vagrancy Act, 1824, s. 4, anyone telling fortunes by palmistry is punishable as a rogue and a vagabond (q.v.).

Palm Sunday. The Sunday before Easter Sunday.

Pandects is another name for the Digest of Justinian. See CORPUS JURIS CIVILIS; DIGEST.

Panel generally means the printed list, made up by the sheriff, of the persons who have been summoned to serve as jurors for the trial of all actions at a particular sittings; it is also used to mean the lists of (1) grand jurors, (2) special jurors, (3) common jurors and (4) magistrates, etc., attached to the precept by the Master of the Crown Office, which is one of the documents authorising the opening of assizes; and the term is also applied to the list of special jurors returned by the sheriff for the trial of a particular action. See IMPANEL; JURY.

"Pannell," says Coke, "is an English word, and signifieth a little part; for a pane is a part, and a pannell is a little part, as a pannell of wainscot, a pannell of a saddle, and a pannell of parchment wherein the jurors' names be written and annexed to the writ" (*Co. Litt.* 158*b*).

Panel of Arbitrators. See HAGUE CONFERENCE.

Pannage. A common of pannage is the right of feeding swine on mast and acorns at certain seasons in a commonable wood or forest. It does not prevent the owner of the wood from lopping and cutting down the trees in the ordinary course of management. Pannage also meant the money paid for agisting (q.v.) swine. There was also a common of after-pannage, or the right of feeding swine after the right of pannage had been exercised.

"Pannage" is also a corrupted form of PARAGIUM (q.v.).

Pannier-man; Pannier. Anciently in the Inns of Court one of the Inn servants used a horse with panniers to convey the supplies of provisions required for use in hall, and was known as the pannier-man.

The servants of the Inner Temple who wait at dinner are still colloquially known as panniers.

Papal Bull. The Bull is a circular leaden seal with, on one side, the images of Saints Peter and Paul and, on the other side, the name of the reigning Pope, and the date of his accession. It is affixed to certain documents issued by the Pope; and these documents are themselves known as bulls.

The introduction into the kingdom of papal bulls had been made treason by the statute 13 Eliz. c. 2. That Act, in so far as it imposed punishment, was repealed by the Religious Disabilities Act, 1846 (9 & 10 Vict. c. 59), which, however, enacted that it should not be lawful to bring bulls into the country. See PRÆMUNIRE.

Paper Blockade. A blockade declared by a belligerent which cannot or does not effectually enforce it.

Paper Books, in proceedings on a writ of error in a criminal case, were copies of the proceedings, with a note of the points intended to be argued, delivered to the judges by the parties two days before the argument.

Paper Days. Before the Judicature Acts there were in each of the common law Courts certain days—known as Special Paper Days—on which the Courts heard the cases entered for argument in a list called the Special List. In the Queen's Bench there were Crown Paper Days, or days for business on the Crown side.

Paper Office; Paper Mill. In 1578 Queen Elizabeth established "the Office of Her Majesty's Papers and Records for Business of State and Council," and appointed a keeper of the papers. This office—popularly known as the Paper Office—existed until 1854 at a number of different addresses in and about Whitehall. Upon the death in 1854 of the then keeper of the State papers, the Paper Office became merged in the Public Record Office (q.v.).

In the old Court of King's Bench there was an office known as the Paper Office or Paper Mill. In it were kept the records of the Court pending their removal to the Treasury of the Exchequer, in which latter office all records of the Courts were finally deposited. See CLERK OF THE PAPER OFFICE.

Paper, Special. A list kept in the King's Bench Division of matters set down for argument on points of law.

Papist; Papish: Popish Recusant. From the Reformation down to 1791 one or other of these terms was used in statutes to describe Roman Catholics. The latter term was for the first time used in the Relief Act, 1791 (31 Geo. 3, c. 32). See RECUSANT.

Paracium. The tenure which anciently existed between parceners (q.v.) when they held of a lord in unequal shares. It was due from the younger to the elder of them.

Parage; Paragium. Equality: the equality referred to is that of blood, name, or dignity. When a fief was divided unequally amongst brothers, the younger held of the elder *ex jure*

et titulo paragii (by right and title of equality) just as in a corresponding case parceners (see PARACIUM) held the one of the other.

Paramount means superior. Thus, "title paramount" means a superior title; for instance, if A purports to convey to B land which really belongs to C, and C ejects B from the land, B is said to be evicted by title paramount, meaning a title superior to that granted to him by A.

In the law of tenure, if A holds land in fee of B, and B holds the same land in fee of C, then C is the lord paramount, and he has the seignory paramount, as opposed to A, the tenant paravail, and B the mesne, whose seignory is called the mesnalty (q.v.).

Paraphernalia or **bona paraphernalia** are such apparel and ornaments given to a married woman by her husband as are suitable to her condition in life, and are expressly given to her to be worn as ornaments of her person only. Before the Married Women's Property Act, 1882, they differed from property held by the wife for her separate use in that the husband might dispose of them during his life and that they were liable for his debts, while they differed from her ordinary chattels in that the husband had no power to dispose of them by will, so that if she survived him she was entitled to them, subject to his debts.

The better opinion would seem to be that now the doctrine of paraphernalia is gone, and that, while the wife may own some chattels and the husband may own others, there is no such mixed and partial ownership as was known to the doctrine.

Paravail means inferior or subordinate. Thus, where A is indebted to B, and B is indebted to C, B is the primary debtor and A is the sub-debtor or debtor paravail.

The term is chiefly used with reference to the tenure of estates in land, a tenant paravail being a tenant who holds land in fee of another and has no tenant who holds of him, as opposed to a mesne lord and a lord paramount (q.v.).

Parcel, in the law of real property, signifies a part or portion of land. Thus, every piece of copyhold land forms parcel of the manor to which it belongs: that is to say, so far as the freehold is concerned, the copyholds belong to the lord, and form part of his lands, although his beneficial interest in them is comparatively small, being subject to the customary estates of the tenants. See COPYHOLD; DEMESNE; MANOR.

The word was also applied (see PARCEL MAKERS) to the accounts of the escheators.

Parcel Makers. These were two officers of the Exchequer who, at a remote date—they were long abolished even in 1739—after making the "parcels" of the escheators' (q.v.) accounts, and after charging the escheators with everything levied by them for the king, then delivered the parcels to the auditors of the Exchequer.

Parcels. In a conveyance, lease or other deed dealing with property, that part which follows the operative words is called the parcels. It contains the description, either expressly or by reference, of the property dealt with, and in the case of lands generally begins with some such words as "All that piece or parcel of land," etc. Sometimes the full description is contained in a recital or in a schedule to the deed, with a reference to a map drawn on the deed. See ABSTRACT; ABUTTALS; DEED; OPERATIVE PART; PREMISES.

Parcels, Bill of. A list of the articles comprised in a consignment of goods, with the prices of the articles. It is sent by a seller to a purchaser.

Parcener; Parcenary. These are the old-fashioned equivalents for coparcener (q.v.) and coparcenary.

Parchment. Prior to the enactment of the Judicature Act, 1875, all writs of summons had from time immemorial been written on parchment. Now, writs of summons are partly printed and partly written (or typewritten) on paper of a prescribed size (R.S.C. Ord. 5, r. 10; Ord. 66, r. 3). Down to 1st April, 1916, all inquisitions (or records of the findings of coroners' inquests) were invalid where murder, manslaughter or *felo de se* was found, unless set out on parchment (see s. 18 (2) of the Coroners Act, 1887, as originally enacted), but now the use of parchment is unnecessary in any case (Indictments Act, 1915, s. 9, sch. 2). See also PROBATE.

Parco fracto, De, was a writ or action for damages caused by a pound-breach (q.v). It has long been obsolete.

Pardon is where the Crown releases a person from the punishment which he has incurred for some offence. A pardon may be granted either (1) before or during a prosecution, in which case it may be pleaded in bar, or (2) after conviction, in which case it may be pleaded in arrest of judgment or in bar of execution, so that the offender is discharged from punishment. Some offences, however, cannot be pardoned, *e.g.*, a common nuisance while it remains unredressed: and a pardon cannot be pleaded to a parliamentary impeachment. A pardon is granted by warrant

under the Great Seal (which is now never used for the purpose) or under the Sign Manual. It may be either free or conditional, that is, the Crown may annex to it a condition on the performance of which the operation of the pardon will depend. For many years past pardons have been granted by the Crown only upon the advice of a Secretary of State. They are, in fact, really granted by the Home Secretary. The Home Secretary now, before deciding any question as to a pardon, can take the opinion of the Court of Criminal Appeal on the matter (Criminal Appeal Act, 1907, ss. 19, 23).

Parens est nomen generale ad omne genus cognationis (*Co. Litt.* 80). (Parent is a name general to every kind of blood-relationship.) This is merely Littleton's explanation of "*parentes*" in the Statute of Merton (20 Hen. 3), c. 6, where that word is in fact used in the same sense as the modern French *parents*.

Parent and Child. The relation of parent and child is not one which is much interfered with by the law, almost the only duties arising from it which are capable of legal enforcement being those of maintenance and education. Every parent is bound to provide necessaries for his children if he is able to do so and they are unable to support themselves; and is bound to send them to school. On the other hand, the children of a poor person not able to work are bound to maintain him or her if they are able to do so. These reciprocal obligations of maintenance are enforceable only as public duties, and not by the person liable to be maintained. See MAINTENANCE; POOR.

As regards third persons, the relation gives the parent the right of protecting the person and property of his child, and *vice versâ*, while in some cases the child is by a fiction considered as the servant of the parent. See SEDUCTION.

See BASTARD; GUARDIAN; INFANT.

Parentela. This, or the fuller form *de parentala se tollere*, signified a renunciation of kindred and of all rights of inheritance from them, effected in Court before twelve men, who made oath that they believed it to be done for good cause. See Leg. Hen. 1, c. 88.

Pares. (Peers, equals.) The best-known use of the word is in the 39th clause of Magna carta, where it is declared that no free man is to be condemned except by the lawful judgment of his peers (*parium suorum*) or in accordance with the law of the land. The lawyers of the seventeenth century contended that this reference to "the judgment of his peers" was in effect a declaration of the right to be tried by a jury. But that was going too far. The jury which they knew was unknown in 1215. What the *judicium parium suorum* meant was the judgment of the *pares curtis* or other vassals of the lord of the accused or the defendant. See PEERS.

Paribus sententiis reus absolvitur (4 *Inst.* 64). (When opinions are equal, a defendant is acquitted.) "When opinions are equal" means when the Court is equally divided. The maxim was relied on by the Star Chamber in a case where the Court was divided four and four. On the hearing of an appeal the order appealed against stands in the event of an equal division of the Court. In cases of summary jurisdiction the proper course is for equally divided justices to adjourn the hearing; but they may dismiss the case and so bar a further prosecution. On an equal division of the joint committee in licensing matters, the chairman has a casting vote (Licensing Consolidation Act, 1910, s. 4). Compare SEMPER PRÆSUMITUR PRO NEGANTE, ETC.

Par in parem imperium non habet (*Jenk. Cent.* 174). (An equal has no authority over an equal.) This is cited by Jenkins in connection with a decision—which is now obviously bad law—that one justice cannot commit another for a breach of the peace. But as regards Courts, the maxim holds good; thus one judge of the King's Bench Division is not bound by any decision of any other judge of that division.

Parish is that district which is committed to the charge of one parson or vicar, or other minister of the Church of England, having cure of souls therein. A parish is, however, since the middle of the seventeenth century, a division for civil as well as for ecclesiastical purposes: thus the collection and application of the poor rate is parochial. Down to about one hundred years ago the ecclesiastical and civil parish in nearly every case covered the same area. Now there are about 15,000 civil parishes and about 14,000 ecclesiastical parishes and the areas coincide in only about 4,000 cases. This is the effect of many statutes by which provision is made for the sub-division of parishes into districts or parishes for ecclesiastical, poor law and taxation purposes, and for the amalgamation of detached portions of parishes. (See CHAPEL; ECCLESIASTICAL COMMISSIONERS; OVERSEERS; PERAMBULATION; POOR LAW.) Now, since 5th March, 1894, parishes for civil purposes

are divided into urban parishes (q.v.) and rural parishes (q.v.).

In every Act passed after 1866, "parish," unless a contrary intention appears, means "a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed" (Interpretation Act, 1889, s. 5).

A place not included in a parish is called extra-parochial. Such places are, however, now in substantially the same position for civil purposes as if they were parishes, that is, so far as regards the collection and application of rates, the registration of voters, etc. See TITHES.

See PAROCHIAL CHURCH COUNCIL.

Parish Apprentices. "Parish apprentices" originated with the Poor Relief Act, 1601, s. 4, which provided that the churchwardens and overseers of the poor of any parish might, with the assent of two justices, bind as apprentices the children of parents unable to maintain them. Poor children are now bound as apprentices by boards of guardians acting in accordance with the Orders of the Ministry of Health (Poor Law Amendment Act, 1844, s. 12). No person can now be compelled to take a parish apprentice (*ib.* s. 13): under the statute 8 & 9 Will. 3, c. 30, parishioners had been precluded from refusing to take apprentices whom the parish required them to receive.

Parish Boundaries. The ecclesiastical parish in most parts of England was simply the old Anglo-Saxon tun or township, or two adjoining townships in one only of which was there a church. It originated long before the period of statute law, and so was a creation of the common law. It became the custom for the parishioners to "beat the bounds," that is to say, to perambulate or walk round the parish in order to perpetuate the memory of the boundaries. This was done during the three days (known as Rogation Days) which precede Ascension Day (q.v.). The 19th Injunction of Elizabeth, while forbidding religious processions generally, sanctioned perambulation and subsequent prayer in the parish church. The proper expenses of perambulation once in every three years are payable out of the poor rate (Poor Law Amendment Act, 1844, s 60), but no charge for refreshments can be allowed.

Perambulations still take place in many parishes, but their necessity or utility has to a large extent ceased by reason of the fact that in the great majority of parishes the boundaries have been fixed by statute during the last century.

Apart from other evidence, the exact line followed in a perambulation will be held to mark the parish boundary.

Parish Clerk. The parish clerk is coeval with the parish. In early times he kept the parish school, accompanied the priest when visiting the sick, and assisted in the services of the church. After the Reformation he sat under or in front of the officiating minister and recited the responses in the church services. Now he assists the minister at baptisms, marriages and funerals, in connection with the two latter of which he receives fees.

Before the Reformation the appointment of the clerk lay with the vicar or rector. Canon 91 of the Canons of 1606 confirmed this arrangement. In some places, under an ancient custom, the parishioners themselves have the right of making the appointment; and Canon 91 does not override such a custom. But the custom is modified by the Lecturers and Parish Clerks Act, 1844, which provides that, where the minister does not himself appoint, the appointment is subject to his consent. Where the parishioners appoint, they act through the vestry or the churchwardens.

The office of parish clerk is a freehold at common law, and down to 1844 there was no means whatever of removing him, but now, under the Lecturers and Parish Clerks Act, 1844, the archdeacon can in a proper case suspend or remove him.

The above applies only to the parish clerk of the ecclesiastical parish known to the common law. The clerks of the many churches erected under the Church Building Acts, 1818 and 1819, and under the New Parishes Acts, 1843, 1844 and 1856, are known simply as clerks and have not the same status as the parish clerk proper.

Parish Clerks Company. See COMPANIES, CITY.

Parish Constables. See CONSTABLES.

Parish Councils. These are the creation of the Local Government Act, 1894. Under s. 1 of that Act there is a parish council in every rural parish (q.v.) with a population of not less than 300; in every rural parish with a population exceeding 100 but less than 300 there must be a parish council if the parish meeting so desires; in every rural parish with a population of less than 100 the county council may, if it thinks fit and if the parish meeting consents, establish a parish council; and the county council may, with the con-

sent of the parish meetings, group together still smaller parishes to be represented by one parish council. Under s. 18 large parishes may be divided into wards, for each of which there is to be a separate election of councillors to serve on the one parish council. Each parish council consists of such number of councillors, not exceeding fifteen or less than three, as the county council may from time to time determine (s. 3 (1)). Parish councillors are elected by the parochial electors at the parish meetings or at polls consequent thereon (s. 48 (1)). The tenure of office is three years (Parish Councillors (Tenure of Office) Act, 1899). A parish councillor must be a parochial elector or must have resided in or within three miles of the parish since the 25th March preceding the election (Local Government Act, 1894, s. 3 (1); Local Government Act, 1897, s. 1).

The parish council appoints overseers (q.v.) (Act of 1894, s. 5); exercises, except in ecclesiastical matters, the functions previously exercised by vestries and churchwardens (s. 6); and possesses various miscellaneous powers and duties, as to which see ss. 7-19 of the Act of 1894.

Parishioner. Anciently this meant a resident in the common-law ecclesiastical parish. Down to the Reformation the word had reference only to religious status: afterwards, when the parish became an area for civil purposes, the word parishioner acquired a civil meaning. In its civil meaning it includes not only the residents in a parish but also non-resident occupiers of land who pay rates. At common law parishioners paying "scot and lot" (q.v.) formed the vestry; as to the present constitution of which see that title. The parochial elector (who is defined in s. 75 of the Local Government Act, 1894) is the modern representative of the parishioner regarded in his civil capacity (see PARISH MEETING).

As to "parishioner" in the modern ecclesiastical sense, see the Public Worship Regulation Act, 1874, s. 6.

Parish Meeting. This, like the parish council (q.v.), is the creation of the Local Government Act, 1894, which provides (s. 2) that in every rural parish there shall be a parish meeting at least once a year, and that it shall consist of the parochial electors (q.v.). Their qualifications are set out, as regards men, in s. 3 of the Representation of the People Act, 1918, and as regards women, in s. 4 of the same Act. The Local Government Act, 1897, s. 2, provides that the annual parish meeting shall be held between 1st March and 1st April. The parish meeting elects the parish councillors where there is a parish council (q.v.).

Parish Register. This is sometimes used as meaning "The register of parochial electors of the parish": see the Local Government Act, 1894, s. 44. It more properly means the register of marriages, baptisms and burials which Canon 70 of the Canons of 1603 requires to be kept in every church and chapel of the Church of England. The keeping of this register is also directed by the Parochial Registers Act, 1812, s. 1: but the Births and Deaths Registration Act, 1836, s. 1, repealed so much of the Act of 1812 as related to the entry of marriages in this register. See REGISTRATION.

Park, in the technical sense of the word, is the same as a chase (q.v.), except that it is enclosed, while a chase is always open. A park, in the popular sense of the word, namely, one erected without lawful warrant, is sometimes called a nominative park by the old writers, but now, even in Acts of Parliament, it is called simply a park. The parks forming part of the demesnes of the Crown are called royal parks. See DEMESNE.

Park-bote. "To be quit of enclosing a park or any part thereof, derived of two English words, Parke and Bote" (Coke, 4 *Inst.* 308). Cowell and all subsequent compilers of law dictionaries have copied this statement. Possibly, however, Murray may be more correct when he says that park-bote means "the repair of the fence or wall of a park." See BOTE.

Parkhurst Prison. A prison established at Parkhurst, in the Isle of Wight, by the Parkhurst Prison Act, 1838. It was originally intended for young offenders. Since 1869 it has been used for male prisoners undergoing penal servitude.

Parliament. The Parliament of the United Kingdom of Great Britain and Ireland is composed of the King or Queen and the three estates of the realm, viz., the lords spiritual, the lords temporal, and the commons. These several powers collectively make laws that are binding upon the subjects of the British Empire, and also separately enjoy privileges and exercise functions peculiar to each. For details see HOUSE OF LORDS; HOUSE OF COMMONS; PREROGATIVE; also ACT OF PARLIAMENT; CHILTERN HUNDREDS; CONTEMPT OF PARLIAMENT; ELECTORAL FRANCHISE; IMPEACHMENT; KNIGHT; PROROGATION.

Parliamentary Agents are persons (usually

solicitors) who transact the technical business involved in passing private Bills through the Houses of Parliament. They are required to sign a prescribed declaration and to give security for compliance with the rules of the House of Commons.

Parliamentary Committees. These consist of (1) committees of the whole House, (2) standing or sessional committees, (3) select committees, (4) joint committees.

A committee of the whole House, whether in the Lords or the Commons, is really the House of Lords or the House of Commons, as the case may be, presided over by a chairman instead of by the Lord Chancellor or the Speaker. In the House of Commons, there are the Committee of Supply and the Committee of Ways and Means. These committees do not legislate. They merely pass resolutions on financial matters. But a resolution of the Committee of Ways and Means which varies or renews taxation has, under the Provisional Collection of Taxes Act, 1913, statutory effect for a limited period. That Act was passed because it was decided—as indeed was obvious—that the practice which had grown up of acting on resolutions of the Committee of Ways and Means before they had been embodied in an Act of Parliament was wholly illegal.

The standing or sessional committees and the select committees consist in each House of a certain number of members who perform various functions in connection with Bills.

Joint committees consist of equal numbers of members of each House. Since 1864 they have frequently been constituted; but between 1695 and 1864 there had been no such committee.

See May's *Parliamentary Practice*.

Parliamentary Deposits. Under the Standing Orders of both Houses of Parliament, the promoters of Bills providing for parliamentary powers over the property of others—such as railway and tramway Bills—are required to deposit in Court sums bearing a certain proportion to the estimated cost of the works proposed. The object is to place a check on speculative promotion and to provide security for persons whose property may be injuriously affected. The principal statute on the subject is the Parliamentary Deposits Act, 1846 (9 & 10 Vict. c. 20): see also the Parliamentary Costs Act, 1865; the Railways Construction Facilities Act, 1864, ss. 34, 35, 36, 38, 40, 41, 43; the Tramways Act, 1870; the Light Railways Act, 1896, s. 11; and the Parliamentary Deposits and Bonds Act, 1892.

Parliament de la Bonde. (The Parliament of the Band.) This was the Parliament held in London in 1321. The Earl of Lancaster and other great barons wore coloured bands as distinguishing marks when they attended, in order to procure a sentence of forfeiture and exile against the Despensers.

Parliamentum diabolicum. (The Diabolical Parliament.) It was the Parliament held at Coventry in 1459. The Duke of York (afterwards Edward IV.) and many of his chief adherents were attainted by it.

Parliamentum indoctum. (The Unlearned Parliament.) The Parliament held at Coventry in 1404, for membership of which all lawyers and persons skilled in the law were declared disqualified.

Parliamentum insanum. (The Mad Parliament.) The Parliament held at Oxford in 1368, distinguished for the extreme character and the violence of its proceedings.

Parochial Church Council. The establishment in every parish of a parochial church council is provided for by the Parochial Church Councils (Powers) Measure, 1921, 11 & 12 Geo. 5 [No. 1]. (See NATIONAL ASSEMBLY; MEASURE.) Such a council is, of course, quite distinct from the parish council, and is in no way concerned with secular matters.

Parochial Electors. "The persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish" (Local Government Act, 1894, s. 2 (1)). See PARISH MEETING.

Parol, in its technical sense, as applied to a legal transaction, means that it has been effected without the solemnity of a deed Therefore an assignment of chattels, or a contract, or a lease, which is either verbal or reduced into a writing not under seal, is called a parol assignment, contract or lease (see CONTRACT). Similarly in the law of evidence, where the contents of a document are brought before the Court either orally or by means of a copy, this is called adducing parol evidence of its contents. Parol evidence also sometimes means extrinsic evidence. See EVIDENCE.

As to demurrer of the parol, see DEMUR.

"Parol" literally means verbal or oral. In early times few persons could write, and therefore when a document was required to record a transaction the parties put their seals to it and made it a deed. Transactions of less importance were testified by word of mouth or by parol, and this use of "parol," to signify the

absence of a deed, remained after simple writing without sealing had come into use.

Parricide. The killing of a father and, in some old writers, of a mother: but the killing of a mother is of course more properly known as matricide. No such offence as parricide or matricide is known to English law: the offence, if any, will be murder or manslaughter; it did not come within the old offence of petty treason (q.v.).

Parson, "*persona ecclesiæ*," says Blackstone, "is one that hath full possession of all the rights of a parochial church." He is called parson, *persona*, because he personates or represents the church. He is a corporation sole. See CORPORATION.

"*Persona impersonata*, parson impersonee," says Coke, "is the rector that is in possession of the church parochiall, be it presentative or impropriate, and of whom the church is full." In other words, a parson impersonee is he who is in full possession of a church. Of course the rector of a presentative advowson is not complete parson until he has been inducted (q.v.), while in the case of an impropriate advowson the rector is perpetual parson.

See ADVOWSON; RECTOR; VICAR.

Parsonage. Strictly, this means the parochial church with the residence of the incumbent, the glebe (q.v.) and the tithes (q.v.); but it is commonly applied to the house only. As to the provision of parsonage houses see GILBERT'S ACTS; and as to their repair see DILAPIDATIONS.

Parson Mortal; Parson Immortal. Before the Reformation, the rector of a church, appointed for his own life, was called "parson mortal" (*persona mortalis*), but any collegiate or conventional body to which the church was for ever appropriated was styled parson immortal (*persona immortalis*).

Pars rationabilis. A reasonable part. See RATIONABILI PARTE BONORUM, DE.

Part. See RIDING.

Part; Party. A person who takes part in a legal transaction or proceeding is said to be a party to it. Thus, if an agreement, conveyance, lease, or the like, is entered into between A. and B., they are said to be parties to it; and the same expression is often, though not very correctly, applied to the persons named as the grantors or releasors in a deed poll (q.v.).

Parties to formal instruments are divided into classes or parts according to their estates or interests in the subject-matter of the transaction; thus, if A. mortgages land to B., C. and D., and they all agree to sell it to E. and F., the conveyance would be made between B., C. and D. of the first part (because the legal estate, which is part of the title to the land, is vested in them jointly), A. of the second part (because he has the equity of redemption, which is the remainder of the title to the land), and E. and F. of the third part, because the whole title is to be conveyed to them. As to the distinction between parties and privies, see PRIVY.

In a legal proceeding, the parties are the persons whose names appear on the record. In Chancery practice, persons who are not parties, but who are affected by certain orders of the Court, can be made parties by being served with notice of such orders. (See NOTICE OF JUDGMENT.) In an action, the parties are divided into plaintiffs and defendants, and, if necessary, they are distinguished according to the manner in which they were introduced into it.

As to who should be made parties to an action, see JOINDER; MISJOINDER; NONJOINDER.

In the case of a petition, the parties consist of the petitioners and the respondents. In the case of a summons, the persons at whose instance it is issued are called the applicants, and the persons to whom it is addressed the respondents.

Parties to a proceeding are also divided into necessary and proper. Necessary parties are those who are interested in the subject-matter of the proceedings, and in whose absence, therefore, it could not be fairly dealt with: proper parties are those who, though not interested in the proceedings, are made parties for some good reason; thus, where an action is brought to rescind a contract, any person is a proper party to it who was active or concurring in the matters which gave the right to rescind.

As to the parties to a bill of exchange, and as to the "parts" of foreign bills of exchange, see BILL OF EXCHANGE.

Partes finis nihil habuerunt, De. In the time of Coke this was an exception (q.v.) taken against a fine levied; it was upon the ground that "the parties to the fine had no estate in the lands."

Partial Loss. See LOSS.

Partibility. See GAVELKIND.

Particata terræ. Anciently this meant a rood (q.v.) of land.

Particeps criminis. One who has a share in a crime: an accessory (q.v.).

Particular Average. See AVERAGE.

Particular Estate. See ESTATE.

Particularity, in a pleading, affidavit, or the like, is the allegation of particulars or details. An excess or deficiency of particularity in a

pleading is equally a defect; the latter entitles the opposite party either to an order for particulars (q.v.), or to an order requiring the other party to amend his pleading (see AMENDMENT), while the former may lead to a disallowance of costs for prolixity (Ord. 19, r. 5; Ord. 65, r. 27 (20)).

Particular Lien. See LIEN.

Particulars. These mean the details of the claim or of the defence in an action which are necessary in order to enable the other side to know what case he has to meet. They are intended to make quite clear the case of the party who furnishes them. Interrogatories (q.v.) and discovery (q.v.), on the other hand, relate to the evidence upon which the case of the other party depends.

As to the High Court, see Ord. 19, rr. 7, 7A, 7B; as to the County Court see County Court Rules, Ords. 6, 15.

Particulars of Breaches and Objections. It was provided by the Patent Law Amendment Act, 1852, s. 41, that in an action for the infringement of letters patent, the plaintiff was bound to deliver with his declaration (now with his statement of claim) particulars (that is, details) of the breaches which he complained of, and that the defendant in an action for infringement, and the prosecutor in any proceedings by *scire facias* (q.v.) to repeal letters patent, were bound to deliver with the plea (now statement of defence) or declaration (as the case might be) particulars of any objections to the validity of the patent on which they meant to rely at the trial. This enactment was repealed by the Patents Designs and Trade Marks Act, 1883 (now itself repealed), neither which, nor any later statute (see PATENTS) contains any corresponding provision.

Particulars of Sale. When land or houses are sold by auction it is usual to prefix to the conditions of sale (q.v.) a description of the property, giving (1) the area, (2) the tenure, (3) the tenancy or tenancies if the property or any of it is let, (4) easements or incumbrances affecting it, (5) any outgoings other than tithe and tithe rentcharge, (6) the name of the auctioneer and the place and time of sale, (7) the name of the vendor.

The particulars and conditions of sale and the memorandum (q.v.) form the contract of sale.

Particular Tenant. The owner of a particular estate. (See ESTATE.) See FEOFFMENT as to the effect of the conveyance by the particular tenant of an estate greater than the particular estate.

Partition is where land belonging to two or more joint tenants, tenants in common, coparceners or heirs in gavelkind is divided among them in severalty, each taking a distinct part. Partition is either voluntary, that is, by agreement between the parties, or compulsory.

At the present day a voluntary partition is effected either by a deed, which varies according to the nature of the property and the tenancy, or by obtaining an order of exchange from the Ministry of Agriculture and Fisheries, which takes effect without any further conveyance.

Compulsory partition is effected by an action for partition in the Chancery Division of the High Court (Judicature Act, 1873, s. 34), in which case the details are generally settled by a scheme in chambers. (See SCHEME.) The Partition Act, 1868 (amended by the Partition Act, 1876), empowers the Court to make an order for the sale of property liable to partition, and the distribution of the proceeds among the persons interested, in cases where that course is more convenient than an actual division of the property itself. (See OWELTY.) Such sale is now much more common than partition.

See COMMISSION (OF PARTITION).

Partitione facienda, De. Anciently when an inheritance descended to more than one heir, and they could not agree to a partition, the writ *de partitione facienda* lay for any of them. It was one of the many writs abolished by the Real Property Limitation Act, 1833, s. 36. The writ was a common law writ. Its abolition left the Chancery Courts with exclusive jurisdiction in partition (q.v.), and that jurisdiction was confirmed to the Chancery Division by s. 34 of the Judicature Act, 1873.

Partner; Partnership. Partnerships are divisible into those known to the law before 1907 and the limited partnerships which first were known in that year. Down to 1890 the only enactments dealing with partnership were s. 4 of the Mercantile Law Amendment Act, 1856 (which has been repealed by the Partnership Act, 1890, and is replaced by s. 18 of that Act), and the Partnership Act, 1865 (q.v.), and, except in so far as those enactments applied, the law as to partnership was to be found only in the decision of the Courts, just as down to 1882 the law as to bills of exchange was entirely case-law.

The Partnership Act, 1890, sets out and declares with little variation the pre-existing law, the chief amendment being that contained in s. 23, which deprived a judgment creditor of an individual partner of the right to issue

execution against the property of the partnership, but gave such creditor power to obtain an order charging the judgment debtor's interest in the partnership.

The Partnership Act, 1890, s. 1, defines partnership as "the relation which subsists between persons carrying on business in common with a view to profit," but excludes from this definition a company incorporated under the Companies Acts or by statute or by letters patent or by royal charter and a company working within the Stannaries (q.v.). At common law; as well as under the Act of 1890, the following are the characteristic marks of a partnership:—

(1) Every partner is entitled and bound to take part in the conduct of the business, unless it is otherwise agreed between them (s. 24 (6)).

(2) Every partner is liable for the debts of the partnership to the whole extent of his property (s. 9). As between the partners, each partner is bound to contribute to the debts in proportion to his share of the profits (s. 24 (1)).

(3) As regards third persons, the act of every partner, within the ordinary scope of the business, binds his co-partners, whether they have sanctioned it or not (ss. 5, 6).

(4) The relation between the partners being personal, no one of them can put a stranger in his place without the consent of the others (s. 24 (7)).

Where no time for the duration of the partnership is fixed, it is called a partnership at will, and may be dissolved at the pleasure of any partner at a moment's notice (s. 32 (c)). As to other modes of dissolving a partnership, see DISSOLUTION.

When a partner dies or retires, and the partnership agreement provides that the partnership shall not thereby be dissolved, the remaining partners are called the continuing partners. A retiring partner (and the estate of a deceased partner) is not liable for the partnership debts contracted after his connection ceased, provided, in the case of a retiring partner, that notice of the fact is given. No notice is required in the case of a dormant partner. As to the bankruptcy of partners, see JOINT; CONVERSION; FIRM.

Partnerships are of two kinds. A general partnership is where the business includes all transactions of a particular class, as where A. and B. agree to carry on the business of bankers, grocers, etc. A particular or special partnership is where the parties agree to share the profits of one particular transaction: as where A. and B. agree to join in selling a particular cargo of goods, or in working a particular patent.

A sub-partnership is where a partner in a firm makes a stranger a partner with him in his share of the profits of that firm. Thus, if A. and B. carry on business as A., B. & Co.; and B. agrees with C. to give him a share of the profits received from the business of A., B. & Co.; C. is a sub-partner with B., but not a partner in the firm of A., B. & Co. See FIRM.

II. A quasi-partnership, or partnership as regards third persons, is where one person is liable for the debts of another as if he were his partner, although no true partnership exists. The cases in which this occurs are referable to one of two principles. The first is, that where a person carries on business as agent for another, the latter is liable to third persons for the debts of the business. If the business is not carried on in his name, he is called a dormant or undisclosed partner. Before 1865, the doctrine was carried much further, so as to make every person who received a share of the profits of a business liable for its debts, but it became the tendency to hold that an agreement entitling one person to share the profits made by another gave rise to nothing more than a presumption that the relation of principal and agent existed between them, and the passing of the Partnership Act, 1865 (q.v.), deprived the question of much of its importance. By the operation of this Act, a person who merely lent money to a firm, in consideration of receiving a share of the profits, was not a partner even as regards third persons, but in popular language he was sometimes called a dormant partner, or *commanditaire* (q.v.), and the effect of s. 2 (3) of the Act of 1890 is identical. The second principle under which a person may be subjected to the liabilities of a partner is, that where a person holds himself out to third persons as a partner in the firm, he is liable to those persons for debts contracted by the firm (Partnership Act, 1890, s. 14 (1)); such a person is called an ostensible partner. Generally, the "holding out" consists in his allowing his name to appear in the firm as if he were a partner, and he is then sometimes called a nominal partner. The mere continuance of a business after a partner's death in the old firm name does not make the estate or the personal representatives of the deceased partner liable for partnership debts contracted after his death (*ib.*, s. 14 (2)).

A limited partnership is one in which, although there must be one or more partners

responsible for all the liabilities of the partnership, there may be one or more partners who are under no liability if they contribute an agreed sum for partnership purposes (Limited Partnership Act, 1907, s. 4 (2)) provided (s. 6) that they take no part in the management, and (s. 8) that the partnership is registered as a limited partnership. See COMMANDITE.

See PART-OWNERS.

Partnership Act, 1865 (also called Bovill's Act), was the statute 28 & 29 Vict. c. 86. Its object was to abolish the common law rule that a person who shares in the profits of a firm is *primâ facie* so far a partner as to be liable for the business debts of the firm. It, therefore, provided that no one of the following facts should of itself make the person concerned a partner in the firm:—(1) An advance of money to the firm in consideration of a periodical payment out of or varying with the profits; (2) remuneration of the services of a servant or agent by a share of profits; (3) the receipt of an annuity out of the profits by the widow or child of a deceased partner; (4) the receipt of a share of profits in consideration of the sale of the goodwill. It also provided that if the firm became bankrupt, the persons who had advanced money or sold the goodwill to it in consideration of a share of the profits, were not to recover anything until the other creditors had been paid in full. The whole Act was repealed by s. 48 of the Partnership Act, 1890; but the above-mentioned provisions of the Act of 1865 are in effect re-enacted by ss. 2 (3), 3 of the Act of 1890.

Part-owners are persons who are entitled to property either jointly, in common, or in coparcenary. Part-owners differ from partners in several respects, the principal of which are: (1) that a partner is the agent of his co-partners within the ordinary scope of the business, so that he has power to bind them towards third persons even against their will, while a part-owner, in the absence of a special agreement, has no such power, and can only deal with his own interest in the property; (2) that a part-owner can transfer his interest to a stranger, while a partner cannot without the consent of his co-partners. The term "part-owners" in this relation chiefly occurs in the law of merchant shipping. Part-owners of a ship are tenants in common. Difficult questions often arise as to whether the co-owners of a vessel are partners in respect of her, either generally or for a particular voyage. See also MANAGING OWNER.

Part Payment, as the phrase implies, is payment of part of a debt. Such a payment (independently of its effect in satisfying the debt *pro tanto*) has a legal effect (1) in dispensing with the necessity of writing in contracts for the sale of goods under the Statute of Frauds (q.v.); and (2) in reviving a debt (or rather the balance of a debt) which would otherwise be barred by the Statute of Limitations, payment of part being evidence of a fresh promise to pay. Part payment by one joint debtor does not revive the debt against the others (Mercantile Law Amendment Act, 1856, s. 14).

Part Performance. See PERFORMANCE.

Partus sequitur ventrem (*I.* 2, 1, 19). (The offspring follow the dam.) This was a rule of the civil law. It never prevailed in England. See LEX ANGLIÆ NUNQUAM, ETC.

Party. See PART.

Party Jury. Used in the statute 14 Car. 2, c. 11, s. 13, as meaning a jury *de mediate linguæ*. See JURY.

Party-wall. In the general common-law meaning of the term, a party-wall is:—(1) a wall of which the two adjoining owners are tenants in common: and in the absence of evidence to the contrary such tenancy will be presumed. But at common law it may also mean—(2) a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners; (3) a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements; or (4) a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favour of the owner of the other moiety.

Party-walls in London are subject to the provisions of the London Building Act, 1894, 57 & 58 Vict., c. ccxiii., which (s. 5 (16)) defines a party-wall in London as being either "(1) a wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners, or occupied, or constructed or adapted to be occupied, by different persons or (2) a wall forming part of a building and standing to a greater extent than the projection of the footings on lands of different owners." As to the rights of adjoining owners in London with regard to such walls, see ss. 87-90 of that Act.

Outside London there is no statute law regarding party-walls; but the bye-laws which may be made under s. 157 of the Public Health Act, 1875, may affect them.

Parum differunt quæ re concordant et cum adsunt testimonia rerum quid opus est verbis

(2 *Bulst.* 53). (Verbal differences are of little account when there is substantial agreement; and when you have facts to bear witness what use is there of words?)

Parum est latam esse sententiam nisi mandetur executioni (*Co. Litt.* 289). (It is not enough that judgment be pronounced unless it be carried to execution.) Compare EXECUTIO EST, ETC; JURIS EFFECTUS, ETC.

Parum proficit scire quid fieri debet si non cognoscas quomodo sit facturum (2 *Inst.* 503). (It avails little to know what ought to be done if you do not know how it is to be done.) Cited in connection with the somewhat vague provisions of the Statute of Westminster III., c. 2, as to apportionment.

Parvise. A moot (q.v.).

Pascha clausum. Low Sunday (q.v.).

Pascha floridum. Palm Sunday (q.v.).

Paschals; Paschal Rents. Quadragesimals (q.v.).

Pascua. Land used mainly for the pasturing of cattle, such as land which is not farmed and is mountain, moor or marsh.

Pascuage; Pascuagium. The grazing or pasturing of cattle or swine.

Pasnage. A form of pannage (q.v.).

Pass.—I. In conveyancing, to pass is to transfer or be transferred. Thus, we may either say that a conveyance by a person entitled to make it passes the estate limited by it (see OPERATIVE WORDS), or that the estate passes by the conveyance.

II. In the practice of the Chancery Division (as to which see R. S. C. Ord. 62) when the draft (or "minutes") of an order or judgment has been settled by the registrar in the presence of the parties, it is left for engrossment, and when it has been engrossed, the parties again attend to examine the engrossment with the draft; if it is correct they sign it, and this is generally called "passing" the order, but strictly speaking the passing is performed by the registrar, who places his initials at the end: after which the order is entered (q.v. and see MINUTES). In simple cases, an order not affecting the rights of the parties *inter se* may be settled and passed by the registrar without notice to the parties: see Ord. 62, r. 14. When an account has been brought into chambers and vouched, the master is said to have passed or allowed it, with or without disallowances or surcharges. The term "pass" is also applied to the accounting party who brings in the account.

III. See ACT OF PARLIAMENT as to the passing of Acts of Parliament.

Passage is the easement of passing over a piece of private water, analogous to a right of way over land. See EASEMENT; WAY.

Passage Broker. A person providing steerage passages from the British Islands to any port out of Europe and not within the Mediterranean (Merchant Shipping Act, 1894, s. 341). He must be licensed (s. 343).

Passage Court. See COURT OF PASSAGE.

Passagio, De. An obsolete writ which anciently was issued to authorise passage overseas.

Passator. One who controlled or who could levy toll for the use of a ford, ferry, or bridge across a river.

Passenger. This means, for the purposes of the Merchant Shipping Act, 1894, any person carried in a ship other than the master, the crew, the owner, or the family and servants of the owner (Merchant Shipping Act, 1894, s. 267).

The London Hackney Carriages Act, 1843, s. 2, contains a definition of "passenger" for the purposes of that Act.

See RAILWAY PASSENGER DUTY.

Passenger Ship. This means, for the purposes of the Merchant Shipping Acts, every ship propelled by mechanical power carrying passengers to, from or between any places in the United Kingdom except steam ferries working in chains (Merchant Shipping Act, 1894, ss. 267, 743; Merchant Shipping Act, 1906, s. 13).

Passim. (In various places.) Used with regard to an author, book, statute, etc., in such a reference as "see the Trade Marks Act, 1905, *passim*."

Past Debt. A debt which is in existence before the doing of some subsequent act in the law relating to it, *e.g.*, a debt which is secured by a promissory note given after the advance had been made and not when it originally was made.

Pasturage; Pasture. "Pasture" means both (i) land employed for the pasturage of cattle, etc., and (ii) the right of pasture.

A right of pasture is the right of feeding animals on the grass and other wild herbage, and the leaves, mast, acorns, etc., of trees growing on land belonging to another person. Rights of pasture are of three kinds, several, common, and seignorial.

A several pasture is one which entitles the person having the right to exclude the owner of the land from feeding his beasts on it. Such a right may be created by grant or prescription. Sheepheaves (q.v.) seem to be several rights of pasture.

A common of pasture is where the person

having the right can only exercise it in common with the owner of the soil. As to the varieties of common of pasture, see COMMON.

A seignorial right of pasture occurs in the case of a fold-course (q.v.).

By s. 113 of the Inclosure Act, 1845, any land directed to be inclosed under that Act may be set apart to be stocked and depastured in common by the persons interested therein. The valuer acting in the matter is to ascertain and allot the stints or rights of pasturage of the persons interested, the numbers and kinds of animals to be admitted to the pasture, the times during which the animals may be kept on the pasture, etc. Such a pasture is called a regulated pasture. See FIELD REEVE.

See SHACK.

Pastus. The maintenance by tenants of the king or other great men when on their lands. Thus a charter of the Anglo-Saxon period (*Mons. Angl.* tom. 1, p. 123) grants land free "*a pastu regis et principum.*"

Patent. See AMBIGUITY; LETTERS PATENT; PATENT.

Patent Agent. No person can describe himself as a patent agent unless he is registered pursuant to the Patents and Designs Act, 1907 (*ib.* s. 84); and a "patent agent" means an agent for obtaining patents in the United Kingdom (*ib.*)

Patent Bill Office. The Attorney-General's Patent Bill Office was the office in which were formerly prepared the drafts of all letters patent other than those for inventions. The draft patent was called a bill (q.v.), and the officer who prepared it was called the Clerk of the Patents to her Majesty's Attorney and Solicitor General. By the Great Seal Act, 1851, warrants were substituted for bills, and by the Great Seal Act, 1880, the duty of preparing such warrants was transferred to the Clerk of the Crown in Chancery (q.v. and see PRIVY SEAL).

Patent Medicine Licence. A licence costing 5s., which must (under penalty of £20 for default) be taken out yearly by every person compounding or selling proprietary medicines (q.v.) liable to duty (Medicine Stamp Act, 1802, s. 9; Stamp Act, 1804, Sch. A.; Customs and Inland Revenue Act, 1875, s. 3).

Patent Office. The only Patent Office now existing is that relating to inventions. It exists by virtue of s. 62 of the Patents and Designs Act, 1907, not merely for the purposes of that Act (see PATENTS), but also for the purposes of the Trade Marks Act, 1905.

The Great Seal Patent Office was the office in which the Clerk of the Patents affixed the Great Seal (q.v.) to the many documents upon which it formerly was required. In 1832 the office of the Clerk of the Patents (see that title) had been abolished; but this (Lord Chancellor's Pension Act, 1832, s. 2) was without prejudice to the rights of anyone entitled to the office in either possession or reversion; and the office in fact existed until it was finally abolished and the duties were transferred to the Clerk of the Crown in Chancery (q.v.) under the Great Seal (Office) Act, 1874, s. 6.

Patent Rolls. See CLOSE ROLLS.

Patents. Patent, for the purposes of the Patents and Designs Act, 1907, "means letters patent for an invention" (*ib.* s. 93). The law as to patents is now to be found in the Patents and Designs Act, 1907, Pts. I. and III., as amended by the Patents and Designs Act, 1919, and in the Patents Rules, 1920, dated 25th February, 1920, and being No. 338 of the Statutory Rules and Orders, 1920. A patent is obtained by making to the Patent Office an application (Patents and Designs Act, 1907, s. 1 (1) (2)) accompanied by a specification (q.v.). If the specification be provisional, the complete specification must be lodged within nine months of the date of the application, or such further time, not exceeding one month, as the Comptroller may direct (s. 5 (1)). The provisional specification secures priority as from the date of the application: for, on acceptance, every patent is sealed as from the date of the application (s. 13). If the complete specification be not accepted by the Comptroller within fifteen months (or eighteen months if he so directs) of the date of the application, the application becomes void unless an appeal to the Law Officers is lodged (s. 6).

A patent, when granted, is sealed with the seal of the Patent Office (s. 14). Its normal duration is sixteen years (s. 17) but this may be extended by five, or in exceptional cases ten, years by the High Court, or a new patent may be sanctioned by the Court (s. 18).

Patents are assignable, and assignments, as well as licences, are to be registered in the Register of Patents (ss. 28, 71). In addition to licences which the patentee *may* grant, there are since 1919 licences which any patentee *must* grant, upon certain terms, if his patent be endorsed by the Comptroller with the words "Licence of Right" (s. 24). Such endorsement is one of the means of preventing abuse of the monopoly given by

the patent. See s. 27 (as amended by the Act of 1919) as to the other remedies for such abuse. As to the revocation of patents, see ss. 25, 26.

The remedy for infringement of a patent is an action for damages or an injunction, or both. See INFRINGEMENT.

A patent will be granted only for something which is both novel (see NOVELTY; PUBLICATION) and of utility; but utility means merely utility for the purpose indicated by the patentee, although that purpose may itself be useless.

See PARTICULARS OF BREACHES AND OBJECTIONS; SCIRE FACIAS; COMMISSIONERS OF PATENTS; TITLE (VI.); DISCLAIMER.

Pater est quem nuptiæ demonstrant (*Co. Litt.* 123). (He is the father whom marriage indicates.) Compare SEMPER PRÆSUMITUR PRO LEGITIMATIONE, ETC.; and see FILIATIO, ETC.

Pater et mater non sunt de sanguine puerorum (3 *Rep.* 40). (The father and the mother are not of the blood of their children.) That is to say, land cannot descend from a child to a parent. See HÆREDITAS NUNQUAM, ETC.

Paternity. See AFFILIATION; BASTARD; LEGITIMACY.

Patria. Used in the old law as meaning a jury of the neighbourhood. See COUNTRY.

Patria laboribus et expensis non debet fatigari (*Jenk. Cent.* 6). (A jury ought not to be harassed by labours and expenses.) This relates to the jury in an assize of novel disseisin.

Patriotic Fund. Commissioners were appointed under the Royal Sign Manual, dated 7th October, 1854, for the purpose of raising and applying a fund (to be known as the Patriotic Fund) for the relief of officers and men in the naval and military service of the Crown who might lose their lives in the Crimean War. A number of Acts, entitled the Patriotic Fund Acts, 1867 to 1899, were passed to regulate the application of the fund. In 1903 the Patriotic Fund Reorganization Act, 1903, established a body corporate, entitled the Royal Patriotic Fund Corporation, and transferred all the property of the original fund to this new body upon trust for the widows, children and dependents of officers and men of the Navy and Army.

Patron of a living or benefice is the owner of the advowson (q.v.).

Patronum faciunt dos, ædificatio, fundus. (Endowment, building, and dedication to religious purposes are necessary to make one the founder [of a church or religious house]). But this is merely what Joan de Garlandia says in *Synonymis* without reference to English law. See Du Cange, s.v. *Patronus*.

Pauper means (i) a person in receipt of relief under the poor laws; (ii) a person suing or defending an action *in formâ pauperis*. As to the former see POOR LAW; GUARDIANS OF THE POOR; OVERSEER; PARISH; SETTLEMENT; as to the latter see IN FORMÂ PAUPERIS; DISPAUPER; DIVES.

Pauper, Assignment to. This is the same as an assignment to a "man of straw." See STRAW.

Pavagium; Pavage. A toll anciently levied to meet the cost of paving streets or other highways.

Pawn; Pawnbroker. Pawn is sometimes used (especially by the older writers) in the same sense as pledge (q.v.), but more usually at the present day it signifies a pledge to a pawnbroker or person who keeps a shop for the purchase or sale of goods, and takes goods by way of security for money advanced thereon. Statutory regulations have been made for preventing frauds and overcharges by pawnbrokers: thus, under the Pawnbrokers Acts, 1872 and 1922, every pawnbroker taking a pledge for a loan not exceeding £10 is bound to give the pawner a pawn ticket, specifying the charges for interest, etc., which he is allowed by statute to make, the period within which the pledge may be redeemed, etc.; he is also bound to keep account books showing all sales of pledges by him, and he has a statutory power of sale by auction with regard to goods pledged for above ten shillings, while goods pledged for ten shillings or under become his property if not redeemed within the year and the days of grace allowed for redemption. In other respects he is a bailee, like an ordinary pledgee. See BAILMENT

A pawnbroker commits an offence if he takes anything in pawn from anyone apparently under the age of fourteen (Children Act, 1908, s. 117), or if he takes any firearm (q.v.) in pawn.

Pawnage. A form of pannage (q.v.).

Payable. A sum of money is said to be payable when a person is under an obligation to pay it. "Payable" may therefore signify an obligation to pay at a future time, but when used without qualification "payable" means that the debt is payable at once, as opposed to "owing" (q.v.).

Payee. See BILL OF EXCHANGE; CHEQUE.

Paymaster-General is the officer who makes the various payments out of the public money

required for the different departments of the State, by issuing drafts on the Bank of England.

By the Chancery Funds Act, 1872, the duties of the Accountant-General of the Court of Chancery were transferred to the Paymaster-General. (See ACCOUNTANT-GENERAL.) The Paymaster-General carried out the duties so transferred to him at the "Office of the Paymaster-General for Chancery Business" in the Royal Courts of Justice, London. The business transacted there included the issuing of directions for the payment and transfer into Court of the moneys and securities belonging to the suitors: the payment by drafts on the Bank of England of sums payable out of Court, and of the interest on funds in Court: the keeping of the necessary accounts, and the issuing of certificates and transcripts of the accounts. Under the Supreme Court of Judicature (Funds, etc.) Act, 1883, all the accounting departments of the various Divisions were consolidated into the Pay Office of the Supreme Court, with the Paymaster-General as its head. The business of the Pay Office is now regulated by the Supreme Court Fund Rules, 1915, dated September 14, 1915 (S. R. & O., 1915, Vol. III., p. 184).

See CERTIFICATE; DIRECTION; PAYMENT INTO COURT.

Payment. This is a transfer of money from one person (the payor) to another (the payee). When made in pursuance of a debt or obligation it is sometimes called payment in satisfaction.

Payment in fact is an actual payment from the payor to the payee; payment in law is a transaction equivalent to actual payment; thus, payment in fact by a debtor to one of two or more joint creditors is payment in law to all; and retainer, set-off, allowance in account, acceptance of security, goods or other means of obtaining actual payment, and payment into Court (q.v.), are said to be equivalent to payment, because they produce a satisfaction of the debt.

Payment in satisfaction is said to be absolute when the debt is completely discharged, as by payment of cash without stipulation; conditional payment is where the debt may afterwards revive if the mode of payment does not result in actual payment, as where a creditor is paid by a cheque or bill which is afterwards dishonoured; whether the acceptance by the creditor of a negotiable security operates as conditional or absolute payment is a question of fact in each case.

As to general and appropriated payments, see APPROPRIATION.

As to the effect of part payment, see PART PAYMENT.

In the law of bills of exchange, payment for honour is where a person pays a dishonoured bill for the honour of some one of the parties. The payor has the rights of a holder against the person for whose honour he has paid, and against all antecedent parties, but the subsequent parties are discharged. See ACCEPTANCE; HONOUR.

See PROTEST.

Payment into Court is the deposit of money with an official or banker of a Court of justice for the purposes of proceedings pending in the Court.

Payment into Court may be made with one of three objects.

I. Where the defendant in an action for debt or damages, or in an Admiralty action, admits the plaintiff's claim to a certain amount, he may pay that amount into Court by way of satisfaction or amends (Ord. 22, r. 1), and plead the payment in as a defence. Except in libel or slander, a defendant may also pay money into Court with a defence denying liability (*ib.*). The plaintiff (unless otherwise ordered) is entitled in either case to receive the amount paid in (rr. 5, 6), and if he accepts it in satisfaction of his entire claim the defendant must pay him his costs of the action (r. 7). In no case where money is paid into Court is that fact to be communicated to a jury before they have found their verdict (r. 22). Like payments into Court may be made in the County Court, where the rules (see County Court Rules, Ord. 9, rr. 12, 13, 26) are to the same effect as the High Court Rules.

II. Money may be paid into Court to remain there pending litigation. Thus, where a *primâ facie* liability is established against a defendant, the Court may, under Ord. 32, r. 6, order him to pay the amount in question into Court to remain there until the rights of the parties have been determined, or, in the language of common law, "to abide the event" of the litigation: so where a defendant is a trustee or stakeholder of a fund he may be ordered to pay it into Court. Payment into Court is also a mode, under Ord. 65, r. 6, of giving security, *e.g.*, for the costs of an appeal, as to which see Ord. 52, r. 15.

III. In the Chancery Division of the High Court, payment into Court is also a mode by which a person may relieve himself from the responsibility of distributing or administering

a fund in his hands. The commonest instance is that of a trustee, as to whom see s. 42 of the Trustee Act, 1893, and R. S. C. Ord. 54B, Another instance is that of promoters under the Land Clauses Acts (q.v.).

See DEPOSIT; PAYMASTER-GENERAL; TRANSFER.

Where land subject to any incumbrance is sold, whether by the Court or out of Court, the Court may direct or allow payment into Court of a sum sufficient to provide for the incumbrance, and thereupon declare the land to be freed from it. The Court may distribute or apply the fund in Court according to the rights of the parties (Conveyancing Act, 1881, s. 5).

Pay Office. The office in which the Paymaster-General (q.v.) performs his duties.

P.C. Prime cost sum. In specifications for building and engineering works it is usual to provide that such and such an article is to be provided at the "p. c." of such and such a sum. Here the prime cost means the net price actually paid by the contractor. He is not entitled to buy the article at the price which a private purchaser would pay and to deduct for himself any trade discount or, apart from special custom, any discount for cash, which may be allowed to him.

Peace. In municipal (as opposed to international) law, "peace" or the "king's peace" is used to signify the law relating to public order. Hence, an indictment used formerly to conclude with a charge that the offence complained of was committed "against the peace of our lord the King." See CONTRA PACEM.

See ARTICLES OF THE PEACE; BILL OF PEACE; BREACHES OF THE PEACE; CLERK OF THE PEACE; COMMISSION; JUSTICE OF THE PEACE; PLEAS OF THE CROWN.

Peace, Sureties of. See SURETIES OF THE PEACE AND GOOD BEHAVIOUR.

Peccata contra naturam sunt gravissima (3 *Inst.* 20). (Crimes against nature are the most heinous.) Cited as a comment on the crimes of patricide and matricide.

Peccatum peccato addit qui culpæ quam facit patrocinium defensionis adjungit (5 *Co.* 49). (He adds one offence to another who, when he commits an offence, joins the protection of a defence.) This is not true as a general statement of the law. It is quoted in connection with the practice as to a defendant on a writ of *Quibus, etc.*, (q.v.) who had vexatiously defended the case. Compare PRUDENTER, ETC.

Peck. A measure of capacity containing two imperial gallons (Weights and Measures Act, 1878, s. 15). Formerly the peck varied in different places and for different articles. It was never used for fluids.

Peculiars, in ecclesiastical law, are districts exempt from the jurisdiction of the ordinary of the diocese. Royal peculiars are the King's free chapels. Formerly the peculiar jurisdictions in England amounted to nearly three hundred; but they have been practically abolished by legislation which was initiated by the Ecclesiastical Commissioners Act, 1836. See COURT OF PECULIARS; ORDINARY.

Pecunia dicitur à pecu, omnes enim veterum divitiæ in animalibus consistebant (*Co. Litt.* 207). (Money (*pecunia*) is so called from cattle (*pecus*), because the wealth of our ancestors consisted in cattle.) Etymologies were as a rule curious rather than accurate in the days of Coke: but this particular etymology is correct. See *Varro, Lib.*, 5, par. 95.

Pecuniary Causes. In the terminology of the ecclesiastical Courts, this expression means such injuries to private persons as these Courts can, or could, entertain for the purpose of making pecuniary satisfaction to those persons. Such "causes" related chiefly to the "subtraction" (q.v.) of tithe, and to the non-payment of various clerical dues. They are now almost obsolete, tithe having been almost universally commuted into tithe rentcharge, and dues not exceeding £10 being recoverable before a Court of summary jurisdiction under the Ecclesiastical Courts Act, 1813, ss. 4-6.

Pedage. Toll anciently paid for passing, whether on horse or on foot, through a town or other place.

Pedigree. In proceedings with reference to the devolution of a deceased person's property, questions as to the relationship of the claimants are called questions of pedigree. They are subject to peculiar rules of evidence. Thus, declarations by deceased persons (see DECLARATION; LIS MOTA); the general reputation of a family, proved by a surviving member of it; entries contained in family Bibles or other books, produced from the proper custody; inscriptions on tombstones; and charts of pedigrees, made or adopted by deceased members of the family, are admissible as evidence on questions of pedigree, by way of exception to the general rule against derivative evidence. (See EVIDENCE; REPUTATION.)

In Chancery practice, when a question of pedigree arises (*e.g.*, on an inquiry as to the next-of-kin or heir-at-law of a deceased

person), a pedigree should, except in very simple cases, be prepared for the use of the master.

Pedis abscissio. The cutting off of a man's foot. See Leg. Gul. I., c. 7; Fleta, lib. 1, c. 38; Bracton, lib. 3, c. 32.

Pedlar. This means "Any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast drawing or bearing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares or merchandise, or procuring orders for goods, wares or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft" (Pedlars Act, 1871, s. 1). Every such person must hold a certificate, costing 5s. and expiring one year after the date of issue (ss. 4, 5) unless he be a commercial traveller, a seller of fish, fruit or vegetables, or a seller at a fair or market (s. 23). The certificate is good for any part of the United Kingdom (Pedlars Act, 1881). The essential difference between a hawker (q.v.) and a pedlar is that a hawker employs, while a pedlar does not employ, a horse, etc., in the course of his business. The case of a motor car has never been provided for: and a pedlar will not become a hawker merely because he uses a motor car.

Peel's Acts. These Acts (named after the first Sir Robert Peel) are the 7 & 8 Geo. 4, cc. 27, 29, 30 (all relating to the criminal law and all now repealed), the Sliding Scale Act, 9 Geo. 4, c. 60 (a corn law repealed in 1842), and the New Parishes Acts, 1843 and 1844.

Peerage. The peerage consists of dukes, marquises, earls, viscounts and barons: see these titles. They are divided into (1) Peers of England created before the Union with Scotland in 1707; (2) Peers of Great Britain created after 1707 and before the Union with Ireland in 1800; (3) Peers of the United Kingdom created since 1800; (4) Peers of Scotland created before 1707; and (5) Peers of Ireland created at any time: as to the right of these five classes respectively to sit in the House of Lords, see that title.

All peerages except baronies (q.v.) have always been created by letters patent, except in the few cases in which they have been created by charter or by statute, and all, except baronies, have always been limited to the heirs male of the body of the original grantee. The creation of a baron by writ of summons is now obsolete, except for the purpose of calling up the eldest son of a peer during such peer's life.

Peers are exempt from arrest in civil proceedings, and from service on juries. If charged with treason or felony, they are tried, not by a jury, but by the House of Lords (q.v.).

No peer, other than an Irish peer not being a representative peer, can be a member of the House of Commons: and no peer can vote at a parliamentary election.

Down to 1909, the House of Commons had for centuries been in the habit of annually passing a resolution to the effect that the interference of any peer in a parliamentary election was a breach of the privileges of that House: but the influence which a peer, as such, can exercise over electors is now negligible; and no such resolution has been passed since 1909.

The children of peers are in point of law commoners, although they bear courtesy titles ranging, according to the rank of the peer, from "Marquis" to "Honourable." See the titles of the various ranks.

Peeress. The wife or the unmarried widow of a peer (q.v.), or a woman upon whom a peerage has been conferred, or a woman holding a peerage descendible to the heirs general of the original grantee.

A peeress in her own right cannot sit in the House of Lords: but under the statute 20 Hen. 8, c. 9, she is entitled to be tried by that House if charged with treason or felony.

Peers (Pares). In the old books it is laid down that "*pares sunt qui de eodem domino feudum tenent*" (those are peers [or equals] who hold of the same lord). These are the peers contemplated by the declaration in clause 39 of Magna Carta that no freeman was to be condemned "*nisi per legale judicium parium suorum*" (except by the lawful judgment of his peers). See Pares.

Peine forte et dure. This was the common-law sequel to a refusal by one indicted for felony to plead "guilty" or "not guilty." The order of the Court was that he be removed and laid upon his back in prison with so much weight upon his body as he could bear—and more—and that he be given small quantities of dry bread and of water upon alternate days until he died. The object of a prisoner in refusing to plead, or "standing mute" as it was called, was to obviate the attainder which resulted from a conviction of felony. Even this means of saving a family from ruin was not available to one indicted for treason: for him, as for one indicted for misdemeanour,

refusal to plead was taken as being a plea of guilty.

In 1772 the statute 12 Geo. 3, c. 20, made refusal to plead to a charge of felony equivalent to a plea of guilty, and so abolished the *peine forte et dure*. As to subsequent legislation, see MUTE.

Pell. See CLERK OF THE PELLS; COMPTROLLER. In addition to meaning a skin of parchment, pell also meant a skin which had not been converted into parchment: see PELLAGE.

Pellage. This was a duty levied on skins exported out of the kingdom.

Pells of Issue and Receipt. These are records of daily payments and receipts by the Exchequer. They took the place of the earlier Receipt Rolls (q.v.). The Pells of Issue now in the Record Office cover the periods 1221-1470 and 1566-1797, while the Pells of Receipt preserved in the same office run from 1213 to 1782. See CLERK OF THE PELLS.

Pembroke. This was anciently a county palatine, but the statute 27 Hen. 8, c. 26, s. 14, made it merely an ordinary county.

Penal Action. This is an action for a penalty which is imposed by some statute as a punishment. When the statute gives the penalty to any person who will sue for it, such an action is known as a popular action; and where the statute gives the penalty partly to the Crown and partly to the informer, the action is known as a *qui tam* action, because the action was formerly described as being brought by one "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," that is to say, "who sues on behalf of our Lord the King as well as for himself."

Penal Rent. See NOMINE PŒNÆ.

Penal Servitude, in criminal law, is a punishment which consists in keeping an offender in confinement and compelling him to labour. It was substituted for transportation by the Penal Servitude Act, 1853. The main distinction between penal servitude and "imprisonment with hard labour" (q.v.) seems to be that the latter is carried out within the walls of a gaol, and cannot be inflicted for more than two years as a rule, though in some cases it may be for three years, while penal servitude is carried out in any place appointed for the purpose by the proper authority, and may be for life or any period not less than three years. (See IMPRISONMENT.) A ticket of leave may be granted to anyone sentenced to penal servitude, but not to anyone sentenced to imprisonment. Under the Rules for Local Prisons, 1st September, 1907, r. 37*a*, anyone sentenced to imprisonment can now, however, if he behaves well in prison, get a remission of not more than one-sixth of his sentence: and he, once he is discharged upon such remission, is deemed to have served the whole of his sentence, in which respect he is at an advantage as compared with the holder of a ticket of leave. See CONVICT: FORFEITURE: TICKET OF LEAVE.

Penal Sum; Penalty. A penalty or penal sum is a sum of money payable as an equivalent or punishment for an injury.

Some penalties are imposed by law; thus, many statutes creating duties of a public nature contain provisions for the recovery of penalties against persons neglecting those duties. Some of these may be enforced by information (q.v.), others by an ordinary action. See INFORMER.

The "exemplary" damages recovered in certain actions for tort are in the nature of penalties. See DAMAGES.

Penalties may also be agreed on by the parties. Thus, in a bond with a condition, the penalty or penal sum is a nominal sum (*e.g.*, double the amount to be secured) which the obligor binds himself to pay if the condition is not complied with. When the obligee sues on it, he recovers only what is due to him under the terms of the condition. See BOND.

Where the parties to a contract agree that, in the event of a breach of its provisions, the one shall pay to the other a specified sum of money, and it appears on the true construction of the instrument, apart from the form of words used, that the sum so specified does not represent the amount of damage caused by a breach of the contract, but is merely a nominal sum, as in the case of a bond (*supra*) then the sum so specified is called a penalty; and if the person injured sues on the contract, he cannot recover the penalty, but only damages for the injury which he has actually sustained. For examples, see DAMAGES.

Formerly the Court of Chancery granted relief against penalties in many cases where the Courts of common law allowed them to be enforced. But this distinction has been abolished since 1873. See EQUITY.

Penance is an ecclesiastical punishment affecting the body of the penitent, by which he is obliged to give public satisfaction to the Church for the scandal which he has given by his evil example; an open confession generally

forms part of the penance, while in some cases the penance may be commuted for a sum of money to be applied for pious uses. But now this punishment is never enforced. See CENSURE.

Pendency; Pendent; Pendente lite. An action, arbitration or other proceeding is said to be pendent after it has been commenced and before the final judgment or award has been given. Pendency is the state of being pendent. "Pendente lite" means during the pendency of a suit. See ALIMONY; GRANT; LIS PENDENS; LIS ALIBI PENDENS.

Pendente lite nihil innovetur (*Co. Litt.* 344). (Nothing should be altered *pendente lite* (q.v.).) Quoted in connection with the common-law rule that, if, pending the decision of a *quare impedit* (q.v.), the defendant bishop instituted a clerk of his own, then the plaintiff in the *quare impedit* had a writ against the bishop for the removal of the bishop's clerk.

Penny. See COPPER COINS; GOLD COINS; SILVER COINS. It should be noted that a penny, whether of copper or of silver, was worth one two-hundred and fortieth part of the pound for the time being: but the gold penny was in a class by itself.

Penny Bank. See SAVINGS BANK.

Penny Post. This, in the modern sense, was instituted pursuant to the Post Office (Duties) Act, 1840, popularly known as the Penny Post Act. During the war of 1914-1918 it became a three-halfpenny post; subsequently it became a twopenny post; and in 1922 it again became a three-halfpenny post. There was an earlier penny post (but only for places within ten miles of the General Post Office) under the statute 9 Ann. c. 10.

Pennyweight. See TROY WEIGHT.

Pensam, Ad. Payment *ad pensam* was payment by weight, as where payment of a pound was made in a pound weight of silver instead of in twenty shillings. See LIBRA PENSA.

Pensa salis. A weight of salt: an ancient measure containing 256 pounds.

Pension. This word is used in four senses: (1) at the University of Cambridge it means, and in the Inns of Court it formerly meant, certain fees payable to those bodies; (2) a consultative meeting of the Benchers of Gray's Inn; (3) an annual payment made to one superannuated, or retired, from the service of the Crown or of the Church, or some other public body; (4) payments in lieu of tithes made to the clergymen of some churches.

As regards the Pension of Gray's Inn it would appear from Waterhouse's *Commentary upon Fortescue* (1663) that formerly all members of the Inn, except students, took part in it; and this seems to have applied to the Parliaments of the two Temples and to the Council of Lincoln's Inn, which are the meetings in those Inns corresponding to the Pension of Gray's Inn. Now, however, only the Benchers of the Inns attend the Pension, the Parliaments, or the Council.

When a pension is granted by the Crown to one who, though not for the time engaged in any active duties, is still liable to be called to active service, and is therefore to be considered in the service of the Crown, as in the case of an officer on half-pay, the pension cannot be assigned, attached or otherwise made liable to his debts. But a pension granted entirely as a compensation for past services may be assigned by the grantee, or it may be taken in execution by his creditors. See CIVIL LIST PENSIONS; POLITICAL PENSION.

Pensions, Ministry of. This Ministry was established pursuant to the Ministry of Pensions Act, 1916, which (s. 1) authorised the appointment of a Minister of Pensions. It (s. 2) transferred to him the powers and duties of the military and naval authorities with regard to pensions and grants payable by them respectively, and the powers and duties of the Commissioners of Chelsea Hospital with respect to grants and pensions (other than in-pensions) payable by them. The salary of the Minister is £2,000 a year (s. 4 (2)): he and one of the secretaries of the Ministry may sit in the House of Commons, and the office of the Minister is to be deemed one of the offices included in Sch. H to the Representation of the People Act, 1867 (see OFFICE OF PROFIT). Further powers were given to the Ministry by the Naval and Military War Pensions, Etc. (Transfer of Powers) Act, 1917; and there have been several other enactments regulating its functions.

Pension Writ. An order which formerly was issued against members of the several Inns of Court who were in arrear for commons (that is to say, dinners) or dues payable to their Inns. The order, which of course was without legal effect, precluded the member against whom it was made from coming to commons or being discharged from his Inn until the arrears were paid. It is now obsolete.

Pentecostals. Offerings anciently made by parishioners at Pentecost, or Whitsuntide, to their parish priest. One-fourth went to him personally, one-fourth to the poor, one-fourth

towards church repairs, and one-fourth to the bishop. Pentecostals were also known as Whitsuntide Farthings, and as Smoke Farthings. These offerings were originally in kind; subsequently they were commuted to money payments. Compare QUADRAGESIMALS.

Pentonville. A prison in the Clerkenwell district of London, established by the Pentonville Prison Act, 1842, which authorised the confinement therein of male convicts under sentence of transportation (q.v.). When penal servitude (q.v.) was substituted for transportation, Pentonville became a prison for convicts sentenced to penal servitude. Ultimately, pursuant to the Housing of the Working Classes Act, 1885, s. 3, the prison was sold and demolished.

Peppercorn Rent. See RENT.

Per. As to actions in the *per*, see ENTRY SUR DISSEISIN.

Perambulation is the act of walking over the boundaries of a district or piece of land, either for the purpose of determining them or of preserving evidence of them. Thus, in many parishes it is the custom for the parishioners to perambulate the boundaries of the parish in Rogation Week in every year. Such a custom entitles them to enter any man's land and abate nuisances in their way. See PURLIEU.

Perambulatione facienda, De. This is a writ which formerly lay where encroachments were alleged to have been made between adjoining lordships. It commanded the sheriff to make due perambulation and to set out the boundaries.

Per auter vie. See TENANT FOR LIFE.

Per capita; Per stirpes. When property is given to the descendants or relations of two or more persons, the question frequently arises whether the donees are to take *per stirpes*, that is, as representatives of their respective ancestors or relations; or *per capita*, that is, whether they together form one class, each member of which is to take an equal share. The question chiefly arises in gifts to descendants. If a testator leaves property to his issue and dies leaving children who are living and grandchildren who are the issue of deceased children, then the property is divided *per capita*, that is, each child and grandchild takes an equal share of the whole. But if there is a gift to two or more persons, with a substitutional gift to the children of such of them as shall die before the gift takes effect, then the distribution takes place *per stirpes*. Thus, if there were three original donees, A, B and C, and B has died leaving three children, and C has died leaving two children, the property is divided into three parts, one going to A, another to B's three children, and the third to C's two children. The expressions *per capita* and *per stirpes* are also used in the law of descent and distribution with reference to the rule of representation. See DESCENT; DISTRIBUTION; NEXT OF KIN; REPRESENTATION.

Percaptura. Anciently this meant a part of a river which was embanked so as to be in the nature of a fish-pond.

Perch. The perch, rod or pole is a measure of length containing five yards and a half (Weights and Measures Act, 1878, s. 11). Even before the perch had a statutory meaning, it was in most cases taken as being of the present statutory length; but in Staffordshire it was eight yards, while in Hereford it was seven yards as regards ditching, and only five and a half as regards walling, and there were many similar local variations.

A square perch of land contains 30¼ square yards, being 5½ yards (or one perch) on each side, if it be an exact square.

Perdonatio utlagariæ. A pardon for outlawry. This was anciently available for one who had been outlawed for not yielding obedience to the King's Court and who had afterwards of his own accord surrendered himself.

Perdono. An obsolete original writ which released the king's claim to have certain moneys paid into the Exchequer.

Perdurable, as applied to an estate, signifies lasting long or for ever: thus, a disseisor or tenant in fee upon condition has as high and great an estate as the rightful owner or tenant in fee simple absolute, but not so perdurable. The term is chiefly used with reference to the extinguishment of rights by unity of seisin, which does not take place unless both the right and the land out of which it issues are held for equally high and perdurable estates.

Perempt. In ecclesiastical procedure an appeal is said to be perempted when the appellant has by his own act waived or barred his right of appeal: as where he partially complies with or acquiesces in the sentence of the Court.

Peremptory. An order, writ or other judicial command, is said to be peremptory when no excuse for non-compliance with it is admitted. Thus, in an action in the High Court, a peremptory order for time is final, and the party must either take the step within the time fixed by it (known as the "peremp-

tory day ") or incur the consequences of not doing so: see Ord. 41, r. 5.

As to peremptory challenges, see CHALLENGE. As to a peremptory *mandamus*, see MANDAMUS. As to peremptory pleas, see PLEA.

Perfecting Bail. See BAIL.

Performance, with reference to a contract or condition, is the act of doing that which is required by the contract or condition. The effect of performance, in the case of a contract, is to discharge the person bound to do the act from liability, and, in the case of a condition, to create or establish the right dependent on the condition. Thus, where A contracts to supply goods to B, not only is he bound to supply them, but he cannot claim their price until he has done so (condition precedent); if he performs the contract by supplying them, he discharges his liability, and at the same time entitles himself to claim their price.

Part performance is where the contract has been partly carried into effect; what is called the doctrine of part performance is the rule that where a contract is not enforceable for want of some formality (*e.g.*, by reason of not being in writing, as required by the Statute of Frauds), and it has been partly carried into effect by one of the parties, the other cannot set up the informality as a defence: as where possession has been taken under a parol contract for the sale of land. See PART PAYMENT. Part performance of a contract will, as a rule, give no right of action to the person who has partially performed it; but an action will lie against one who has accepted and retained the benefit of the part performance.

In equity, the doctrine of performance is applied to cases where A has covenanted to purchase and settle or leave by will property in favour of B, and B has obtained the benefit stipulated for, although the covenant has not been strictly performed. Thus, where A covenanted to purchase lands of £200 a year and to settle them on his wife and the children of the marriage, and purchased lands of that value, but did not settle them, it was held that this was a performance of his covenant, and that the eldest son was therefore not entitled to have both the benefit of the lands which had descended to him as heir-at-law and to have the covenant performed by the purchase of other land.

See DISCHARGE; ESSENCE OF THE CONTRACT; PAYMENT; SATISFACTION.

Periculosum est res novas et inusitatas inducere (*Co. Litt.* 379). (It is a dangerous thing to introduce innovations which have never been tried before.) See EVENTUS VARIOS, ETC.: compare MINIME MUTANDA, ETC.

Periculum rei venditæ, nondum traditæ, est emptoris. (A thing, sold but not yet delivered, is at the risk of the purchaser.) Compare DAMNUM SENTIT, ETC.; RES PERIT, ETC.; but see MORA, ETC.

Peril. See INSURANCE; RISK.

Per incuriam. (Through want of care.) An order of the Court which clearly is the result of some oversight is said to have been made *per incuriam*.

Perinde valere. The initial words of the dispensation anciently given by the Pope to a clerk presented to a benefice for which he was disqualified. The power of granting such dispensations was transferred from the Pope to the Archbishop of Canterbury by the statute 25 Hen. 8, c. 21.

Per infortunium. (By mischance.) See HOMICIDE.

Perjury. (1) "If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding which he knows to be false or which he does not believe to be true he shall be guilty of perjury . . . (2) The expression judicial proceeding includes a proceeding before any Court, tribunal or person having by law power to hear, receive and examine evidence on oath" (Perjury Act, 1911, s. 1). The statute does not declare perjury to be a felony; and it consequently remains a misdemeanour, as it was at common law.

"No person shall be convicted of any offence against this Act, or of any offence declared by any other Act to be perjury or subornation of perjury or to be punishable as perjury or subornation of perjury solely upon the evidence of one witness" . . (Perjury Act, 1911, s. 13). This is merely declaratory of the pre-existing law, under which it was necessary to have either (1) two witnesses or (2) one witness whose evidence was corroborated by independent proof of some separate material fact, such for instance as independent proof of a material letter written by the accused.

See AFFIDAVIT; AFFIRM; DECLARATION; FALSE SWEARING; OATH; SUBORNATION OF PERJURY.

The Perjury Act, 1911, repeals the multitudinous enactments which had declared false swearing of various kinds to be perjury or to be punishable as perjury. It is a complete code dealing with the various kinds of false

oaths, false declarations, and false affirmations.

Permanent Hague Court. See HAGUE CONFERENCE.

Permissive Waste. See WASTE.

Permutatione archidiaconatus et ecclesiæ eidem annexæ cum ecclesia et prebenda, De. A writ anciently addressed to the ordinary requiring him to admit to a benefice a clerk who had made an exchange with the incumbent.

Per my et per tout. See JOINT TENANCY.

Pernancy; Pernor. Pernancy is the act of taking or receiving rents or other profits of land: the person who takes them is called the pernor. The terms are now obsolete.

Per pais, Trial by. (Trial by the country): see COUNTRY; PATRIA.

Perpetual Commissioners. See COMMISSIONERS FOR TAKING ACKNOWLEDGMENTS, ETC.

Perpetual Curate. See CURATE; CHAPEL.

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit, ab initio non valet (*Bac. Max. Reg.* 19). (It is an everlasting law, that no positive and human law shall be perpetual, and a clause which excludes abrogation is invalid from its commencement.) Compare NON IMPEDIT, ETC.; POTESTAS, ETC.; and see LEGES POSTERIORES, ETC.

Perpetual Injunction. See INJUNCTION.

Perpetuation of Testimony. Under the Perpetuation of Testimony Act, 1842, which was repealed by the Statute Law Revision and Civil Procedure Act, 1883, s. 3, any person who would, in circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any property, real or personal, the right or claim to which he could not bring to trial before the happening of that event, might file a bill in Chancery to perpetuate any testimony material for establishing his claim; and where the Crown was affected by the claim, the Attorney-General was a necessary defendant. In a proper case, the Court made an order that the witnesses whose testimony was required should be examined, cross-examined and re-examined in the usual way: and, when this had been done, the cause was at an end. This jurisdiction was transferred to the High Court of Justice in the Chancery Division by the Judicature Act, 1873, and now, under Ord. 37, rr. 35, 36, a precisely similar procedure, except that the commencement of an action is substituted for the filing of a bill in Chancery, is available in the circumstances contemplated by the Act of 1842. Bills to perpetuate testimony as to legitimacy were formerly of not unfrequent occurrence; but the same object became attainable under the Legitimacy Declaration Act, 1858, and bills in Chancery for the purpose became rare, as are now the corresponding actions. See DE BENE ESSE; LEGITIMACY.

Perpetuity. Perpetuity properly signifies a disposition of property by which its absolute vesting is postponed for ever; as, for instance, if property were conveyed to trustees upon trust to pay the income to A for life, and after his death to his eldest son for life, and after *his* death to *his* eldest son, and so on. Such dispositions are contrary to the policy of the law, because they "tie up" property and prevent it's free alienation. Accordingly, it has long been a rule in the law relating to contingent remainders, that an estate cannot be given to an unborn person for life, followed by any estate to any child of such unborn person. But the rule which is commonly known as the rule against perpetuities is that applicable to executory interests (q.v.): it forbids any disposition by which the absolute vesting of property is or may be postponed beyond the period of the life or lives of any number of persons living at the date of the disposition, and the further period of twenty-one years after the death of the survivor. Thus, property may be given upon trust for A for life, and after his death for such of his children as attain twenty-one. Hence "perpetuity" has come to mean any disposition which is void, because it infringes this "rule against perpetuities"; such as a gift to A for life, and after his death to such of his children as shall attain twenty-five.

The principal exceptions to the rule are estates tail and limitations following estates tail (q.v.), charitable dispositions, and grants of property to particular families for public services. See ACCUMULATION; APPOINTMENT; MORTMAIN; REMOTENESS.

Per proc (or P.P.). See PROCURATION.

Per quæ servitia. Before the levying of fines (q.v.) was abolished in 1833, the writ *per quæ servitia* was a judicial writ issuing on the note (q.v.) of a fine and lay for the cognizee (q.v.) of a manor, lands, or rents or other services, to compel the tenants at the time of the fine being levied to attorn (q.v.) to him thereon.

Perquisite. Anything acquired by perquisition (q.v.), something acquired by the holder of a place or office over and above the wages or salary thereof; and, in connection with

copyholds, such things as fines, escheats, heriots, reliefs, wards (see those titles), etc., as distinguished from yearly profits or income.

Perquisitio; Perquisition. Anciently this meant the acquisition of anything otherwise than by inheritance.

Per quod. (Whereby.) In the old common law system of pleading the *per quod* was that part of the declaration in which the plaintiff stated the special damage which the wrongful act of the defendant had caused him, as in an action for slander. (See DAMAGE.) *Per quod servitium amisit* ("whereby he has lost the benefit of his service"), and *per quod consortium amisit* ("whereby he has lost the benefit of her society"), were allegations used in actions against persons for injuring a man's servant or wife. See HUSBAND AND WIFE; SERVICE.

Perry. "Any reference to cider shall include a reference to perry" (Finance (1909-10) Act, 1910, s. 52). Perry is the same as cider (q.v.), except that pears are substituted for apples.

Per se. (By itself; taken alone).

Person. In jurisprudence, a person is the object of rights and duties, that is, capable of having rights and of being liable to duties, while a thing is the subject of rights and duties.

Persons are of two kinds, natural and artificial. A natural person is a human being (see MONSTER). Artificial persons include (i) a collection or succession of natural persons forming a corporation (q.v.); (ii) a collection of property to which the law attributes the capacity of having rights and duties. The latter class of artificial persons is only recognised to a limited extent in English law: examples are—the estate of a bankrupt or deceased person, and the assets of a company or partnership. See PERSONALTY; STATUS.

In the construction of every Act, whenever passed, the word "person" includes a body corporate, if the Act relates to an offence punishable summarily or on indictment, and includes any body of persons, corporate or unincorporate, if the Act relates to any other subject, unless—in either case—a contrary intention appears (Interpretation Act, 1889, ss. 3, 19).

A corporation is not a person within the meaning of any statute making a penalty recoverable by the "person or persons" who shall inform and sue for the same.

Persona. See PARSON.

Personable. In an obsolete sense, this meant having the status of a person (q.v.).

— **Persona conjuncta æquiparatur interesse proprio** (*Bac. Max.* 18). (A connection is regarded as being on the same footing as a man himself.) Thus a deed is deemed to be executed under duress and is void as against anyone induced to execute it by threats of injury to his father or to his son.

Persona designata is a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. Thus, if a testator bequeaths property to his children as a class, only those who fill that character at his death, that is, the survivors, can participate in the gift, while if he bequeaths it to them as *personæ designatæ*, the children of such of them as have died in his lifetime will take their parents' shares under the 33rd sect. of the Wills Act, 1837 (see LAPSE). So property may be given to an illegitimate child as *persona designata*, but not as a child simply (see CHILD). Compare NOMEN COLLECTIVUM.

Personal is that which has reference to the person of an individual, as in the case of a personal contract (see CONTRACT). A personal injury is an injury to the person of an individual, such as an assault, as opposed to an injury to his property, such as a trespass. See ACTIO PERSONALIS MORITUR CUM PERSONÂ.

In the division of actions, a personal action originally meant one which was brought to enforce a remedy against a specific person, while in a real action the remedy was against a thing. Thus, an action on a contract or tort was a personal action, while an action to recover land was a real action, because the land itself could always be recovered. (See ACTIONS; IN PERSONAM; IN REM.) Hence also arose the distinction between real and personal property, as to which see the respective titles.

A system of law is said to be personal when its operation is limited to one of several races inhabiting a State, as is the case in India.

See also ACT OF PARLIAMENT; SERVICE

Personal Property or Personalty may be said generally to include (i) everything the subject of ownership not being land, or an interest in land, and also (ii) a few exceptional interests in land which from historical reasons are nevertheless personalty.

Personal property differs from realty chiefly in the following respects:—(1) Realty is in theory only capable of being held for an estate (q.v.), while personalty is essentially the subject of absolute ownership. A chattel is accordingly incapable of being entailed. But limited and reversionary interests in chattels, analogous to certain estates in land,

may be created under the doctrines of equity: thus, a personal property may be vested in trustees in trust for A. for life, and after his death for B.; but the rules governing contingent remainders in land do not apply to personal property. Chattels may also be made the subject of joint ownership and ownership in common (see JOINT; JOINT TENANCY; TENANCY IN COMMON), and of appointment under a power (see POWER). (2) On the death of its owner, personalty (like, since 1897, realty also) passes to the executor or administrator of the deceased; and if he died intestate, it is divisible among his next-of-kin according to the Statutes of Distribution, while realty, except in so far as it has to be applied to the payment of debts, passes, through the executor or administrator, to the devisee of its owner if he has disposed of it by will, or to his heir if he has died intestate. (See ANIMALS FERÆ NATURÆ; DESCENT; DONATIO MORTIS CAUSÂ; FIXTURE; GOODS; GROWING CROPS; HEIR; HEIRLOOM; NEXT-OF-KIN; TITLE DEEDS.) As to the administration of the real and personal property of a deceased person, see ADMINISTRATION; ASSETS; EXECUTOR. (3) Personal property is capable of being transferred or conveyed by modes inapplicable to real property. See ASSIGNMENT.

Personal property is subject to several divisions. As to the distinction between chattels real and chattels personal, see CHATTEL. Chattels personal are further divisible into choses in possession and choses in action. (See CHOSE.) Mixed or impure personalty consists of leaseholds, terms of years, estates at will, land directed to be converted into money (see CONVERSION), and money secured on land, *e.g.*, by mortgage. The term impure personalty is generally used, with reference to the Mortmain Act, to denote property which, though personalty, was not (up to 1891) allowed to be given to charitable uses by will, etc. (See CHARITABLE USES ACT; DEBENTURE; MORTMAIN.) Pure personalty comprises all personal property not connected with land in such a manner as to fall within the Mortmain Act. Personal property is also divisible into (i) corporeal personal property, which includes moveable and tangible things, such as animals, ships, furniture, merchandise, etc.; and (ii) incorporeal personal property, which consists of such rights as personal annuities, stocks, shares, patents and copyrights.

Personal Representatives. This expression includes executors (q.v.) and administrators (q.v.), whether acting with regard to personal property (q.v.) or, under the Land Transfer Act, 1897, with regard to real property. See REAL REPRESENTATIVE.

Personation is the act of representing oneself to be someone else, whether living or dead, real or fictitious. At common law personation for the purpose of fraud is a misdemeanour. By various statutes personation for the purpose of obtaining property, dividends, wages, etc., or of giving votes at elections, is made felony. See CORRUPT PRACTICE, as to personation at elections. As to personating a husband, see RAPE.

Per stirpes. See PER CAPITA.

Per totam curiam. (By the whole Court.) Used formerly of a unanimous decision.

Per verba, etc. See VERBA, ETC.

Perverse; Perversity. See TRIAL; VERDICT.

Pesage; Persage. A duty anciently paid for having goods weighed.

Peter ad Vincula, St. See GULE OF AUGUST.

Peter Pence. A levy of one penny per house formerly made annually on the 1st of August, that day being the feast of St. Peter ad Vincula. The proceeds went to the Pope. It was abolished by the statute 25 Hen. 8. c. 21, s. 1, which was repealed by the statute 1 & 2 Phil. & Mar. c. 8, s. 3. The statute of Hen. 8. was revived by the statute 1 Eliz. c. 1, s. 4. See DENARII S. PETRI.

Petit Cape. See CAPE.

Petition is a written statement addressed to a Court or public officer setting forth facts on which the petitioner bases a prayer for remedy or relief. With the exception of petitions of right (q.v.), petitions are merely a peculiar mode of applying to a Court, and do not necessarily indicate that the right sought to be maintained is different in its nature from ordinary rights. See ACTIONS AND MATTERS IN THE HIGH COURT; MOTION; SUMMONS.

The person by whom a petition is presented is called the petitioner, and the persons on whom it is served, in order that they may appear at the hearing and oppose or consent to the granting of the prayer, are called the respondents.

Petitions in the Chancery Division are of two kinds, those presented in a pending action or suit, and originating petitions. Petitions presented in pending actions are of various kinds according to the nature of the application: thus, there are petitions of course (see OF COURSE) and special petitions, the latter being the proper method of applying to the Court where a long and intricate statement of facts is necessary, while in simpler cases application can be made by motion. The growth of facilities for disposing of business

in chambers and for the use of originating summonses has led to an extended use of summonses instead of either petitions or motions.

Originating petitions are usually of statutory origin, having been introduced to save the expense of a regular action in simple cases. The examples of most usual occurrence are petitions under the Trustee Acts, the Settled Estate Act, the Settled Land Acts, the Lands Clauses Consolidation Acts, and winding-up petitions under the Companies Acts. (See those titles.) As to petitions by trustees, executors, etc., for the opinion or direction of the Court, see EXECUTOR. See, generally, Ord. 52, r. 16, and notes thereto in the *Annual Practice*.

In the Probate, Divorce and Admiralty Division every matrimonial suit is commenced by a petition praying the relief sought, *e.g.*, a decree of nullity or dissolution of marriage, etc. In addition to these original petitions, subsidiary or incidental petitions of various kinds are sometimes required to be presented in a suit, *e.g.*, to claim the custody of children, for alimony, etc.

Formerly the pleadings in Admiralty actions commenced with a petition by the plaintiff in the nature of a declaration (q.v.) at common law. See now STATEMENT OF CLAIM; PROTEST.

In Bankruptcy, a petition is the mode by which proceedings to administer an insolvent's estate are commenced. It may be a petition for adjudication presented by a creditor, or by the debtor himself. See ADJUDICATION; ARRANGEMENT; BANKRUPTCY; DECLARATION.

In the House of Lords and Privy Council, every appeal is commenced by a petition of appeal praying that the judgment appealed from may be reversed or varied. Interlocutory petitions are also sometimes required, *e.g.*, to extend the time for lodging the printed cases or for leave to introduce fresh evidence.

Proceedings in lunacy are sometimes instituted by a petition for an inquiry, and after inquisition every matter requiring to be brought before the Court forms the subject of a petition. See LUNACY.

See PETITION OF RIGHT; ELECTION PETITION.

Petition of Right is the mode by which a subject can claim relief from the Crown for certain kinds of injury arising from the acts of the Crown or its servants, *e.g.*, an illegal seizure of goods, wrongful possession of land, or a money claim consisting of a debt or damages for breach of contract. The petition itself is a document in which the petitioner sets out his right, legal or equitable, to that which is demanded by him, and prays the King to do him right and justice, and, upon a due and lawful trial of his right and title, to make him restitution. The petitioner is called the suppliant, and the persons against whom relief is prayed (for any person in enjoyment of the property or right claimed is made a party) are called the respondents. The petition may be presented in any of the divisions of the High Court on the Home Secretary granting his fiat for that purpose (Petition of Right Act, 1860, s. 1; Naval Prize Act, 1864, s. 52). The Petition of Right Act, 1860, ss. 6, 7, provided that, if the petition was presented in Chancery, the subsequent proceedings up to judgment were to follow those in a suit in equity; and if in one of the common law Courts, that they were to follow those in an action at law. As petitions of right are not affected by the Judicature Act, the rules of the former common law and equity practice are still applicable to them. The Statute Law Revision and Civil Procedure Act, 1881, s. 6, extends the rule-making powers of the judges to all proceedings by and against the Crown: but no rules relating to petitions of right have been made. See AMOVEAS MANUS; FIAT; MONSTRANS DE DROIT; TRAVERSE.

The title "Petition of Right" is also popularly applied to the statute 3 Car. 1, c. 1.

Petition, Subject's Right to. The right of the subject to petition the Crown or Parliament was denied by James II., but was affirmed by the Court in the case of the Seven Bishops (see title BISHOPS, CASE OF THE SEVEN); and the right was re-formulated in the Bill of Rights (see title BILL OF RIGHTS). But violent and tumultuous petitioning is forbidden by the statute 13 Car. 2, st. 1, c. 5, which was put in force on the threatened presentation of the Chartist Petition in 1848, and is still in force.

The right of petitioning was of great importance when only a few persons possessed the parliamentary franchise; but now, when practically everyone has a vote, petitions are unimportant and comparatively rare.

Peto's Act. The popular title of the Trustee Appointment Act, 1850, which was passed at the instance of Sir Samuel Peto, M.P.

Petra. Used as meaning a stone (q.v.) weight.

Petroleum. The enactments as to the safe keeping and sale of petroleum are the Petroleum Act, 1871, the Petroleum Act, 1879, and the Petroleum (Hawkers) Act, 1881. They are all to be construed as one, and are collectively entitled the Petroleum Acts, 1871 to 1881 (Act of 1879, s. 1; Act of 1881, s. 7).

"For the purposes of this Act the term 'petroleum' includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum or any of the above-named oils" (Act of 1871, s. 3); and "in the Petroleum Act, 1871, the term 'petroleum to which this Act applies' shall mean such of the petroleum defined by s. 3 of that Act as, when tested in manner set forth in Schedule I. to this Act, gives off an inflammable vapour at a temperature of less than 73° of Fahrenheit's thermometer" (Act of 1879, s. 2).

The Petroleum (Production) Act, 1918, s. 1, provides that no person, other than a person acting for or holding a licence from the Crown, shall bore for or get petroleum in the United Kingdom: other sections regulate such boring and getting: and s. 5 enacts that "for the purposes of this Act the expression 'petroleum' means all petroleum and its relative hydrocarbons (except coal and bituminous shales and other stratified deposits from which oil can be extracted by distillation) and natural gas, existing in its natural condition in strata." The Act is without prejudice to the right of any person who had been using any supply of natural gas for any commercial purpose on 21st November, 1918 (s. 6).

See OIL IN NAVIGABLE WATERS.

Petty Bag Office was the principal office on what was formerly the common law side of the Court of Chancery, and was under the management of an officer called the Clerk of the Petty Bag (q.v.). Under the Judicature Act, 1873, s. 16, it became an office of the High Court of Justice. Out of it issued all original writs, certain kinds of writs of error and *certiorari*, commissions of charitable uses, idiocy, and lunacy, commissions to seize escheated and forfeited lands, etc., writs of *dedimus potestatem*, *congé d'élire*, *scire facias* to repeal letters patent and enforce recognisances, etc., and writs on the calling of a new Parliament. In it were filed traverses of inquisitions and returns to various commissions, including commissions for production of a *cestui que vie*. (See the various titles.) In it was also transacted business connected with the admission of solicitors, which in 1888 was transferred to the Law Society (q.v.). The practice of the office was regulated by the Petty Bag Act, 1849, and the general orders. By the Judicature (Officers) Act, 1879, s. 14, the office of Clerk of the Petty Bag was abolished as from the occurrence of the next vacancy, which in fact occurred in 1888; and his powers and duties are now vested in the Senior Clerk of the Crown Office Department of the Central Office (q.v.). The Petty Bag Office was so called because in it the proceedings in which the Crown was concerned were preserved in a little sack or bag (*in prava baga*) instead of being enrolled on rolls as in the case of other proceedings. See CHANCERY; HANAPER.

Petty Jury; Petty Larceny; Petty Treason. See JURY; LARCENY; TREASON.

Petty Serjeanty. "Tenure by petite serjeanty," says Coke, "is where a man holds his land of our soveraigne lord the king, to yield to him yearly a bow, or a sword, or a dagger, or a knife, or a lance, or a paire of gloves of maile, or a pair of gilt spurs, or an arrow, or divers arrowes, or to yield such other small things belonging to warre." . . . "And such service is but socage in effect."

The Act 12 Car. 2, c. 24, took away from this tenure the incidents of livery and primer seisin, but does not seem to have affected it in other respects. See GRAND SERJEANTY; SOCAGE; TENURE.

Petty Sessional Court. This means "a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house," and includes the Lord Mayor or any alderman of the City of London, or any salaried magistrate when sitting in any place where he is authorised by law to do alone any act for which two justices are required (Interpretation Act, 1889, s. 13 (12)). Such a Court, as will be seen from the preceding sub-section of the same Act, does not include any Court sitting otherwise than under the Summary Jurisdiction Acts. It must be held (Summary Jurisdiction Act, 1879, s. 20) in a house or place generally or occasionally used for the holding of special or petty sessions (Interpretation Act, 1889, s. 13 (13)).

Petty Sessions is an occasional meeting of two or more justices of the peace, arranged between themselves for the transaction of business for which the presence of more than one justice is either necessary or desirable. It includes any meeting, not being a general or quarter sessions, which justices are authorised to hold. Colloquially it means what is more properly described as a petty sessional Court (q.v.). Petty sessions, for the purpose principally of exercising summary jurisdiction, are commonly held weekly. In

cities, boroughs, and towns corporate having a separate commission of the peace, every sitting of justices of the peace or of a stipendiary magistrate is deemed a petty sessions of the peace (Petty Sessions Act, 1849, s. 1). See SPECIAL SESSIONS.

Pew. An exclusive title to pews and seats in the body of an ordinary parish church may be maintained in virtue of a faculty, or by prescription claimed in respect of a messuage in the parish. All other pews and seats in the body of the church are the property of the parish; and the churchwardens, as the officers of the ordinary, and subject to his control, have authority to place the parishioners therein. A pew annexed by prescription to a messuage cannot be severed from it.

As to the chief pew in the chancel, see CHANCEL.

In the case of churches erected under the Church Building Acts, the distribution of the pews and seats is vested in the Ecclesiastical Commissioners and the bishop of the diocese, and they have power to fix rents for pews, subject to the provisions of the Acts.

Pharmaceutical Society of Great Britain. See CHEMISTS.

Pharmacopœia, British. A book, published under the authority of the Medical Act, 1858, s. 54, by the General Council (q.v.), which sets out the method of preparing, and the components of, the medicines and compounds generally used in practice. Where a standard for a drug is fixed by the Pharmacopœia, that standard is *primâ facie* the one to be adopted by a Court in deciding whether an offence has been committed against the Sale of Food and Drugs Acts: but evidence is admissible to show that there is a different commercial standard.

Philosophers' Stone. An imaginary substance reputed by the mediaeval alchemists to be efficacious for the "multiplication" (q.v.) of metals. Henry VI. (notwithstanding the statute of Henry IV. against "multiplication"), granted letters patent to various persons authorising them to find the philosophers' stone: see *Coke*, 3 *Inst.* 74.

Photograph. For the purposes of copyright (q.v.) the expression "'photograph' includes photo-lithography and any works produced by any process analogous to photography" (Copyright Act, 1911, s. 35 (1)). The photographer is the owner of the copyright (s. 5 (1)) unless he received valuable consideration for taking it, in which case the copyright belongs to the person from whom such consideration emanated (s. 5 (1) (a)). The period of copyright is fifty years from the date on which the photograph was taken (s. 21). The sending through the post of indecent matter (including photographs) is punishable on indictment or summarily (Post Office Act, 1908, s. 63); and Post Office regulations may be made to prevent the sending or delivery of such matter (s. 16).

Physicians. See MEDICAL PRACTITIONERS.

Picard; Pickard; Piker. A large boat or barge propelled by sails and of from about fifteen to forty tons which was used for coasting and river work. See the statutes 31 Edw. 3, stat. 2, c. 2, and 34 & 35 Hen. 8, c. 9, s. 1.

Piccage. A duty payable to the owner of a fair for liberty to pick holes in the ground for the posts of stalls.

Pickard. An instrument with iron spikes or teeth for raising a nap upon cloth, the use of which was prohibited by the statute 3 & 4 Edw. 6, c. 2. See PICARD.

Picketing by members of a trade union on strike consists in posting members at all the approaches to the works struck against, for the purpose of observing and reporting the workmen going to or coming from the works, and of using such influence as may be in their power to prevent the workmen from accepting work there. It having been found that picketing led to molestation, threats and even violence, the Conspiracy and Protection of Property Act, 1875, made picketing an offence punishable by fine or imprisonment (see INTIMIDATION; MOLESTATION; TRADE UNIONS); but now (see COMBINATION) picketing has been legalised.

Piepowder Court. See COURT OF PIE POUDRE.

Pierage. Anciently this seems to have meant an imposition for the maintenance of a pier: now, when used at all, it means a toll for the use of a pier by a vessel.

Piers. The law as to piers is to be found in the Public Harbours Act, 1806, and the statutes mentioned under HARBOURS.

Pigeon-house. Anciently it was held that none but the parson or the lord of the manor or a tenant by permission of the lord could have a pigeon-house or dovecot on his land: but by Coke's time it was established that any freeholder might have one on his land. This restriction of the right to keep pigeons was due to the fact that pigeons kept by the lord of the manor and feeding on the lands of the tenants were of distinct value: and the right to keep a dovecot was one jealously

insisted on by the French *seigneur* down to 1789.

Pillory. A wooden framework arranged in such a way that an offender was kept standing behind it, with his head and his hands protruding through holes. The instrument seems to have dated from very soon after the Conquest. It was used as a common-law punishment for offences involving fraud on the public, who frequently took a hand in the matter by pelting the culprit with missiles ranging from bad eggs to brickbats: this sometimes had fatal results, for which no one was ever made amenable. The pillory was also used during the seventeenth and eighteenth centuries as part of the common-law punishment of persons convicted of minor political offences, such as libel and sedition. It was, moreover, a statutory punishment for various offences. The statute 5 Eliz. c. 9, s. 2, for instance, provided not merely that one convicted of perjury should be put in the pillory but also that his ears should be nailed to it. This enactment remained unrepealed until 1911; but the pillory had in the meantime been abolished by the statute 56 Geo. 3, c. 138, for all offences except perjury and cognate offences, and, by the statute 7 Will. 4 and 1 Vict. c. 23, for all offences. See HEALFANG: compare STOCKS.

Pilotage; Pilots. A pilot has been defined as a person who is taken on board a ship for the purpose of conducting her through a river, road or channel, or from or into a port. A licensed pilot is one licensed for a particular district by a pilotage authority (Pilotage Act, 1913, s. 16). Pilotage is not, however, by any means exclusively in the hands of such persons. A pilotage authority may grant to the master or mate of a ship a pilotage certificate under which he can act as her pilot within the district of the authority (s. 23): and such a certificate is frequently held by an officer on board vessels trading regularly and at short intervals to or from certain ports. The chief pilotage authority is the Trinity House (q.v.).

The law as to pilotage has been consolidated by the Pilotage Act, 1913. See COMPULSORY PILOTAGE.

Pimp Tenure. In *Pla. Cor. apud Windesor* for 12 Edw. 1, rot. 28, there is this record:—"*Wilhelmus Hoppeshort tenet dimidiam virgatam terræ in eadem villa* [*Bokhampton*] *per servitium custodiendi sex damisellas, scil. meretrices, ad custum Dominini Regis.*" This is noted under the head of PIMP-TENURE by various compilers of old and modern law dictionaries, upon the strength of the substitution of "*usum*" for "*custum*," which makes the last four words mean "*for the use* of our Lord the King," instead of "*at the cost* of our Lord the King." If *meretrix* is to be taken in its ordinary sense, the record merely shows that William Hoppeshort was bound to do what is now known as rescue work, the cost of which was defrayed by the King. Blount (Tenures, p. 3), indeed, notes that in those times "*meretrices*" meant "laundresses": but Du Cange does not show any such use of the word. The record is not, in any event, evidence of the iniquities of the feudal system. Compare the mythical JUS PRIMÆ NOCTIS.

Pin. A small barrel, containing four and a half gallons, used for beer. It is not a legal measure.

Pinder. An officer of a manor or borough, whose duty it was to impound all stray cattle within the manor or borough.

Pin Money. An allowance made by a husband to a wife for her dress and personal expenses. It may be secured by settlement, or it may be given voluntarily. When secured by settlement the wife cannot assign it: if she predeceases her husband, her representative cannot recover the arrears, if any; if she is living with her husband she generally cannot on his death claim arrears for more than one year unless she has demanded her allowance and failed to get it. But if she is living apart from her husband she can claim up to six years. A legacy by a husband satisfies *pro tanto* a claim for the allowance.

Pint. A measure of capacity containing one eighth part of a gallon (q.v.) (Weights and Measures Act, 1878, s. 15).

Pipe. A "roll" in the Exchequer also known as the Great Roll. It consisted of the accounts relating to the hereditary revenues of the Crown. See CLERK OF THE PIPE; COMPTROLLER.

Piracy.—I. In private or civil law, piracy is the infringement of copyright (q.v.); in other words, where a person reproduces the whole or part of a work which is the subject of copyright, so as to interfere with the profit of the owner, he commits a piracy, unless the new work is a *bonâ fide* abridgment of the other, and unless such abridgment is something more than a mere concatenation of extracts. The importation of pirated copies from abroad is an infringement of copyright. The remedy for a threatened piracy or for continued infringement is by injunction; for a past infringement the remedy is damages, or in certain cases a penalty is imposed by

statute: see the Copyright Act, 1911, s. 6 (1).

II. In criminal law, piracy is of two kinds. Piracy by the law of nations is the offence of taking a ship on the high seas or within the jurisdiction of the Lord High Admiral from the possession or control of those who are lawfully entitled to it, and carrying away the ship or any of its goods, tackle, etc., under circumstances which would have amounted to robbery if the act had been done within the body of an English county. Piracy by the law of nations is punishable with penal servitude for life, unless it is accompanied by attempted murder, or violence dangerous to life, in which case the punishment is death (Piracy Act, 1837, s. 2). Several offences have been made piracy, and punishable with penal servitude for life, by various statutes (see SLAVE TRADING); but such statutory piracies are punishable only by the States on whose waters or ships they were committed, while piracy by the law of nations is punishable by any State which may have captured the pirate either in its own territorial waters or anywhere on the high seas.

The Treaties of Washington Act, 1922, s. 4, Sch. II. (1.), provides that any person shall be punishable as for an act of piracy (by any Court which would have jurisdiction if the act were in fact piracy) if he violates the following laws of war:—(1) A merchant vessel must be called on to submit to visit and search before she can be seized; (2) a merchant vessel must not be attacked unless she refuses to submit to visit and search or to proceed as ordered after seizure; (3) a merchant vessel must not be destroyed until all on board have been placed in safety.

Piscary. See FISHERY.

Pistol. See FIREARMS.

Pit and Gallows. See FURCA ET FOSSA.

Pitching; Pitching Money. Formerly these expressions meant the toll charged for the exhibition of an article for sale in a market or fair.

Pix. See PYX.

Place. No comprehensive definition of this expression can be given, the meaning varying according to the context in which it is used. There have been many cases turning upon its meaning in the Betting Houses Act, 1853. It has been decided that "Tattersall's Ring" on a race-course is not a "place" for the purposes of that Act ([1897] 1 *Q. B.* 579); but where a bookmaker in a similar enclosure erected a bamboo structure, supporting a board and a canvas banner on which was inscribed: "*Bob Patch, London. All in, run or not—pay first past the post,*" and betted on a stool alongside the structure, it was held that he had used "a place for the purpose of betting with persons resorting thereto" within the meaning of s. 1 of the Act ([1899] 1 *Q. B.* 892). See also PUBLIC PLACE.

Place of Abode. The meaning of this expression varies for the purposes of different statutes. As used in the Municipal Corporations Act, 1835, s. 32 (providing that voting papers should set out, amongst other things, the "places of abode" of the persons voted for), and as used in the Summary Jurisdiction Act, 1848, s. 1 (providing that a summons may be served by leaving it with some person at the "last or most usual place of abode" of the defendant), it was held to mean "place of residence," as distinguished from place of business. But the Court of Exchequer, in a considered and unanimous judgment, decided that there was a sufficient compliance with the Constables Protection Act, 1751, s. 1 (which required notice of an intended action against a justice to be endorsed with the name of the attorney proposing to issue the writ and with "the place of his abode") where the notice was endorsed with the attorney's place of business, although he slept and resided elsewhere.

Placita. (Pleas.) Thus we have the *Placita coronæ* or *Pleas of the Crown*. See PLEA.

Placitare; Placitator. Anciently these words meant respectively "to plead" and "a pleader."

Placitum nominatum. In Leg. Hen. 1, c. 29, this means the day on which an accused person was required to appear and plead.

Plaint. Every action in a County Court is commenced by the registrar entering, in a book kept for the purpose, at the request of the intended plaintiff, a "plaint in writing," stating the names and the addresses of the parties, and the substance of the action: on this a summons (q.v.) is issued (County Courts Act, 1888, s. 73: see also C.C.R., Ord. 5). The registrar gives the plaintiff a note called a plaint note, containing the date of the entry, the day fixed for the trial, and some notices for the guidance of the plaintiff (C.C.R., Ord. 7, r. 1).

Before the abolition of real actions (see ACTIONS) a copyholder could only plead and be impleaded in respect of his copyhold land in the Court of the manor, by what were called customary plaints, which were analogous to the common law writs in real actions, and called after them, *e.g.*, plaints in the nature

of writs of entry, plaints in the nature of writs of right, etc.

Formerly "plaint" meant, in the superior Courts, the cause for which the plaintiff complained against the defendant and for which he obtained the King's writ.

Plaintiff is a person who brings an action. See PART.

Plantation. This was the term applied to the steps taken in the reign of James I. for the division between English settlers—or planters—of the forfeited lands which had been held in Ulster by the Earls of Tyrconnell and Tyrone.

Plantations, The. The name applied to the English settlements in North America and in the adjacent West Indian Islands. These were the Plantations of Jamaica, Barbadoes, the Bermudas, the Leeward Islands, etc., which are now British Colonies; and there were also on the mainland the Plantations of Virginia, Maryland, Carolina, Georgia, New England, and New York, which now are included in the United States of North America. The term "plantations" fell into disuse during the second half of the eighteenth century: it was never applied to the British settlements in the Antipodes.

See COLONIES; BOARD OF TRADE; TRANSPORTATION.

Plea.—I. A plea is a mode of putting forward a defence to certain proceedings. Thus, if a writ of *scire facias* is issued against a person, and he wishes to put forward facts in answer to the writ, he does so by plea: or, if a return is made to such a writ, and the person at whose instance the writ was issued wishes to contest it, he puts in a plea to the return. (See TRAVERSE.) This formerly applied also to prohibition (q.v.), in which now, however, the proceedings are the same as in an ordinary action for damage.

In a criminal prosecution, the prisoner has to plead to the indictment, which he may do either—(1) by pleading to the jurisdiction, that is, alleging that the Court has no jurisdiction to try him; or (2) by demurring (see DEMURRER); or (3) by pleading some plea in bar, namely, either a general plea, "guilty," or "not guilty," or a special plea, such as "autrefois acquit," "autrefois convict," or "pardon." (See the various titles.) As formal defects are now always capable of amendment, pleas in abatement (q.v.) are obsolete.

In the ecclesiastical Courts, all the pleadings are called pleas. The first plea is either articles or a libel, and every subsequent plea is an allegation. (See those titles.)

Formerly a plea was the principal mode of putting forward a defence to a civil action or suit. In an action at common law, the plea was similar to the statement of defence under the present practice in so far that it stated facts as an answer to the declaration, as opposed to a demurrer (q.v.); but it differed from a statement of defence in stating the facts vaguely and in a peculiar form. Pleas were of two kinds, dilatory and peremptory. The first class included pleas to the jurisdiction, that is, pleas denying the jurisdiction of the Court, pleas in suspension, and pleas in abatement; the second class consisted of pleas in bar. A plea in suspension was one which alleged grounds for not proceeding with the action at present: where it was grounded on infancy it was also known as demurrer of the parol, as to which see DEMUR. A plea in abatement did not give an answer to the plaintiff's case, but showed that he had committed some informality, *e.g.*, that he had not joined the proper parties to the action. A plea in bar showed a substantial defence to the action, either by traverse or by confession and avoidance (q.v.). Formerly pleas were distinguished as general issues, in which the defendant simply traversed the plaintiff's allegations, and special pleas, in which the defendant stated the grounds of his defence; from the latter term arose the expression special pleading. (See PLEADER; ISSUE.) A plea *puis darrein continuance* ("after the last continuance") was a plea setting up a ground of defence which had arisen after the defendant had pleaded in the ordinary course: thus if, after the defendant had delivered his plea, the plaintiff gave him a release, the defendant could set up the release by plea *puis darrein continuance*. After continuances (q.v.) had been abolished the defendant could, after defence, plead new matter of defence which had arisen since the writ or since his defence by a pleading which was said to be "to the farther maintenance of the action"; and this pleading was in substitution for the original defence.

In equity, pleas were very rare in practice, and were only used in cases where the defendant was in a position to state one or more facts, which if inserted in the bill would make it demurrable; in such a case the defendant by filing a plea (which generally had to be sworn to by him) might avoid putting in an answer, and bring the suit to an end at once. Pleas in equity were of various kinds, of which pleas to the jurisdiction and pleas in bar were the principal.

II. In its original sense, "plea" meant any legal proceeding. "Pleas of the Crown" were criminal proceedings, while civil actions were called "common pleas," or "pleas" simply. The Court of King's Bench was formerly said to have a Crown side and a plea side, the former being its jurisdiction in Crown business, and the latter its jurisdiction in ordinary actions: so the jurisdiction of the Court of Exchequer in ordinary actions was called its plea side, as opposed to its jurisdiction in revenue matters. See PLEADING.

Plea to the Action. Formerly this was a pleading in which the plaintiff's cause of action was attacked; it is to be distinguished from the ACTION OF THE WRIT, which attacked only the form of the plaintiff's action.

Plead.—I. In its general sense, to plead is to answer the previous pleading of the opposite party in an action or other proceeding by denying the facts therein stated, or by alleging some fresh facts; pleading was formerly opposed to demurring: the former raised a question of fact, the latter a question of law. Thus, if a plaintiff delivered a statement of claim which was not only demurrable but also failed in stating the facts correctly, the defendant might apply for leave to plead and demur, and, if he obtained leave to do so, he delivered a statement of defence and a demurrer.

II. To plead also signifies to plead a plea: thus, in a criminal prosecution the prisoner pleads guilty or not guilty, etc.; and under the old common law practice, a defendant was said to plead to the jurisdiction, to plead in bar, etc., according to the nature of his plea. To plead issuably, was to demur or plead some substantial defence to the action, so that it might be determined on its merits.

In criminal practice, a prisoner charged with treason or felony is said to plead over when in addition to, or after, pleading specially, he pleads "not guilty." As to a further use of the term "pleading over," see AID BY VERDICT.

See PLEA; RESPONDEAT OUSTER.

Pleader is a person whose business it is to draw pleadings. Formerly, when pleading at common law was a highly technical and difficult art, there was a class of men known as "special pleaders not at the bar," who held a position intermediate between counsel and attorneys. The class is now extinct.

See DRAFTSMAN.

Pleading. The pleadings in an action in the High Court are written or printed statements delivered alternately by the parties to one another, until the questions of facts and law to be decided in the action have been ascertained. Each pleading commences with the title of the action, and states concisely the material facts on which the party pleading relies, but not the evidence by which they are to be proved (Ord. 19, r. 4). The first pleading is the plaintiff's statement of claim (q.v.), unless the writ of summons itself is specially endorsed with the statement of claim (see Ord. 3, r. 6). The next pleading is delivered by the defendant, and is a statement of defence or a statement of defence and counterclaim (q.v.) combined. The next pleading is a reply (q.v.). If the reply is not merely a joinder of issue (q.v.), the next pleading is delivered by the defendant. This and the subsequent pleadings, if any, follow the names of the old pleadings at common law, viz., rejoinder, surrejoinder, rebutter and surrebutter (q.v.); but the general rule (see DIRECTIONS, SUMMONS FOR) that no reply or subsequent pleading shall be pleaded without leave of a master (Ord. 23), coupled with the power of the judge to order issues to be settled (see ISSUE), and the power of amendment (q.v.), will in general prevent the pleadings from going so far. In any case, however, unless either party makes default in pleading, or unless issues are settled, the ultimate result must be that one party joins issue upon the preceding pleading of his adversary (Ord. 19, r. 18), and then the pleadings are said to be closed. If a reply or subsequent pleading be ordered, then, if the plaintiff does not deliver the reply, or any party does not deliver any subsequent pleading within the proper time, the pleadings are then deemed to be closed, and the statements of fact in the pleading last delivered are deemed to have been denied and put in issue (Ord. 27, r. 13). The next step is the notice of trial (q.v.). As to judgment by default in other cases, see JUDGMENT.

See COMMERCIAL CAUSES.

Pleadings are by no means so essential a part of an action as they once were. The necessity for the leave of a master before a reply or subsequent pleading can be delivered, the control exercised by the Court over pleadings generally under Ord. 30, rr. 1, 8 (see DIRECTIONS), and the provision made by Ord. 34, r. 9, for trial without pleadings have materially altered the old practice. See also COMMERCIAL CAUSES.

There are some miscellaneous proceedings in which the pleadings are different from those in an action, *e.g.*, petitions of right (q.v.), in which the pleadings after the petition itself

follow the same course as those in an action at law or suit in equity under the old practice (*infra*): and proceedings by *scire facias*, extent, traverse of office or inquisition, and criminal proceedings, as to which see INDICTMENT; INFORMATION; PLEA.

Formerly different systems of pleadings, except as to demurrers, prevailed in the common law and equity Courts. In a common law action the pleadings consisted of (1) the declaration, (2) plea, (3) replication, (4) rejoinder, (5) surrejoinder, (6) rebutter, (7) surrebutter. In a suit in equity the pleadings consisted of (1) the bill of complaint; (2) either (a) a demurrer, (b) a plea, (c) an answer, (d) a disclaimer, or (e) a combination of these; and (3) replication. Formerly rejoinders were also used in Chancery pleadings, but they had been disused long before the Judicature Act. According to the later practice of the Court of Chancery, if the plaintiff required to state fresh facts after the defendant had filed his answer or plea, he amended his bill.

In the early ages of the common law the pleadings were oral statements, or arguments by the parties or their counsel, made alternately until the question in dispute was ascertained.

Pleas of the Crown. Originally this meant offences which were triable only in the King's Courts, as distinguished from offences which could be dealt with in the old County Court (known as pleas of the sheriff), and those cognisable in manor and borough Courts. After justices of the peace had been established all offences were included in the expression "pleas of the Crown": and in proceedings relating to them they were averred to have been committed *contra pacem Domini Regis, coronam et dignitatem suam* (against the peace of our Lord the King, his crown and dignity). Compare the form used in Pleas of the Sword (q.v.) where *gladius* was substituted for *corona*.

The term "pleas of the Crown" was also applied to the various interrogatories which collectively made up the ARTICLES OF THE EYRE (q.v.).

Pleas of the Sword. When the Conqueror granted the earldom of Chester (q.v.) to Hugh Lupus, the grant carried with it *jura regalia* (q.v.), including the right to hold Courts corresponding to the King's Courts elsewhere than in a county palatine. In proceedings before a Court of the earldom with regard to what were known in England generally as pleas of the Crown, it was averred that any given offence had been committed *contra pacem Domini Comitis gladium et dignitatem* (against the peace of our Lord the Earl, his sword and dignity). In a later grant by Henry III. of the earldom of Chester, pleas of the sword or *placita gladii* were expressly excepted from the grant. Compare SPATÆ PLACITUM.

Pledge. A pledge is where the owner of a chattel agrees with another person that it shall be held by the latter (the pledgee) as security for the payment of a debt or performance of an obligation. This entitles the pledgee to hold the chattel until payment or performance, and, upon failure of payment or performance at the proper time, to sell it; but until he does so, the pledgor may redeem it by payment or performance.

Specific appropriation is sometimes called an equitable pledge. See APPROPRIATION.

See BAILMENT; CHARGE; MORTGAGE; PAWN.

Pledgery. Suretyship.

Pledges to Restore. Before the plaintiff in foreign attachment could issue execution against the property in the hands of the garnishee, he had to find "pledges to restore," consisting of two householders, who entered into a recognisance for the restoration of the property, as a security for the protection of the defendant; for, as the plaintiff's debt was not proved in any stage of the proceedings, the Court guarded the rights of the absent defendant by taking security on his behalf, so that if he should afterwards disprove the plaintiff's claim he might obtain restitution of the property attached. See FOREIGN ATTACHMENT.

Plegii de prosequendo; Plegii de retorno habendo. In the action of replevin, these respectively were pledges to prosecute the action with effect, and pledges to return the object distrained if the action resulted adversely to the plaintiff.

Plegiis acquietandis. A writ which anciently lay for a surety against one for whom he was surety if the latter failed to pay on the appointed day.

Pleins pouvoirs. See PLENIPOTENTIARY.

Plenarty. Under the old practice, when a defendant in an action of *Quare impedit* pleaded that the church was full (that is, that a clerk had been previously presented and instituted), he was said to plead plenarty. (See VACATION.) This plea, if proved, was at common law a good defence to the action; but the Statute of Westminster II., 13 Ed. 1, st. 1, c. 5, enacted that it should not be a defence to an action brought by the rightful

patron within six months; and it is no defence to an action at any time by the King.

Plenary. An admission or confession, whether in civil or in criminal law, is said to be plenary when it is, if believed, conclusive against the person making it. As to plenary causes in ecclesiastical practice, see CAUSE.

Plene administravit is the name given to the defence set up by an executor or administrator when sued upon a debt of his testator which he has no assets to satisfy: if he has some assets, but not enough to satisfy the debt, his defence is called a plea of *plene administravit præter*. See JUDGMENT.

Plenipotentiary. This at present means, as regards the British diplomatic service, a diplomatic agent of the second or third class, who is described as minister plenipotentiary, sometimes in conjunction with other titles. Thus, in Peru we have an "Envoy Extraordinary and Minister Plenipotentiary," while in the United States we have an "Ambassador," and in Rumania a "Minister."

A plenipotentiary originally meant an envoy with full powers (*pleins pouvoirs*) to settle a specific point without reference to his Government.

Pleno lumine, In. (In broad daylight.)

Plevin. A warrant or assurance. Now obsolete except in the compound form REPLEVIN (q.v.).

Plough; Plough-land. In Anglo-Saxon times this, in the northern and eastern counties, meant as much land as could be tilled in the year by one team of eight oxen; and it seems also to have included originally the meadow and pasture land of the holding. The corresponding term in the other counties was the "hide." Both terms seem to be represented in Domesday and other Latin records by *carrucata*. See CARUCATE.

Coke defines plough-land as a quantity of land "not of any certain content, but as much as a plow can by course of husbandry plough in a year." (*Co. Litt.* 69*a*.)

Ploughbote. See ESTOVERS.

Plough Monday. The Monday next after the EPIPHANY (q.v.).

Plough Silver. Money formerly paid by tenants in lieu of ploughing the lord's land as sometimes required by their tenure.

Plow-Alms. A payment, of one penny for every plough-land, which was anciently made to the Church.

Plowden, Edmund. Born 1518; entered the Middle Temple 1538, and was subsequently called to the Bar; died 1585. He is best known by his "Commentaries," or reports, covering the period 1550-1578. On the title-page of the portion published in 1571 he describes himself as "un apprentice de la comen ley," which indicated that, although a barrister, he was not a serjeant-at-law, as he would have been but for his refusal to conform to the Established Church. See APPRENTICII AD LEGEM.

Plural. See SINGULAR.

Pluralities. By several modern statutes no spiritual person can hold any two benefices at the same time except in certain cases, in some of which a licence or dispensation by the bishop is required. These are Acts forbidding pluralities, that is, the holding of benefices in plurality. See CESSION.

Plures participes sunt quasi unum corpus, in eo quod unum jus habent (*Co. Litt.* 164). (Several sharers are as one body, in that they have one right.) A quotation from Fleta which Coke uses to illustrate the law as to coparceners.

Pluries. See ALIAS WRIT.

Plus valet unus oculatus testis quam auriti decem (4 *Inst.* 279). (One eye-witness is worth more than ten witnesses who can speak only from hearsay.) The general rule, of course, is that hearsay evidence is altogether inadmissible except in certain well-known cases, as to which see CONFESSION; DECLARATION.

Plus valet vulgaris consuetudo quam regalis concessio (*Co. Copyh.* § 31). (Common custom has more power than royal grant.) For no royal grant can create the immemorial custom which is essential to a manor.

Poaching is the popular name for the offence of unlawfully taking or destroying game (q.v.) on another man's land, and is part of the title of the Poaching Prevention Act, 1862, though the offences dealt with in that Act are not described in it as poaching.

Pocket Judgment. A colloquial equivalent for a statute merchant (q.v.), the holder of which had, so to say, a judgment in his pocket, inasmuch as he could, upon non-payment on the date fixed, levy execution as if he had recovered a judgment.

Pocket-sheriff. If the Crown appointed as sheriff a person who was not one of the three persons nominated for the office in the Exchequer, the person so appointed was known as a pocket-sheriff. See PRICKING FOR SHERIFFS.

Pœnâ ex delicto defuncti, hæres teneri non debet (2 *Inst.* 198). (The heir ought not to

be bound in a penalty for the wrong done by the defunct.) See IN RESTITUTIONEM, ETC., the note to which applies

Poet Laureate. It is stated to have been the custom of the mediaeval universities to invest with a wreath of laurel anyone who had taken the degree of grammar, which included rhetoric and the making of verses; and this gave him the title of *poeta laureatus*, or poet laureate. John Kay (or Caius), in dedicating to Edward IV. a translation of a Latin poem, described himself as the King's "humble poete lawreate"; but this did not necessarily mean that he held any position analogous to that of the earlier *versificator* (q.v.). A succession of poets from Chaucer (*ob.* 1400) to Spenser (*ob.* 1599) acted occasionally as informal poets laureate, or court poets: and the academic use of the title *poeta laureatus* ceased. The first actual appointment as poet laureate was that of Ben Jonson in 1617. Since then the office has been conferred by letters patent on various poets, of whom Dryden, Southey, Wordsworth, and Tennyson were the most notable. From 1670 the laureate got annually a butt of canary (commuted in 1813 for £27 a year): and there has always been also a stipend which is at present £72 a year. Down to 1813 the laureate wrote, or was supposed to write, an ode on each birthday of the Sovereign. Now he has no definite duties.

Points. The questions of law to be argued on a writ of error. See PAPER BOOKS.

Points of Claim; Points of Defence. See STATEMENT OF CLAIM; STATEMENT OF DEFENCE.

Poisoned Grain or Food. (1) Selling, exposing for sale, etc., any seed or grain which has been made poisonous, except for *bona fide* use in agriculture; and (2) placing anywhere any poison or any poisoned edible matter (other than sown grain or seed) without taking reasonable precautions for the safety of domestic animals, are offences punishable on summary conviction (Protection of Animals Act, 1911, s. 8).

Poisons, Sale of. As to the drugs which are "poisons" and as to the persons who may sell them, see CHEMISTS AND DRUGGISTS. Sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid, though none of them are "poisons" for the purposes of the Pharmacy Act, 1868, and any other substance specified in an Order in Council, cannot be sold at all unless the receptacle containing the substance is marked with its name, with the word "Poisonous" and with the name and address of the vendor (Poisons and Pharmacy Act, 1908, s. 5). Substances specified in the Schedule to the Poisons and Pharmacy Act, 1908, or added thereto pursuant to s. 2 of the Pharmacy Act, 1868, may not be sold except in receptacles marked in like manner; and it is unlawful to sell any of the poisons (including arsenic) specified in or added (under s. 2 of the Act of 1868) to Part I. of the Schedule, (1) except to a person known to the seller or introduced by some person known to the seller; (2) without entering in a book (which must be signed by the seller and the buyer), the date of the sale, the name and address of the buyer, the name and quantity of the poison sold, and the alleged object of the purchase (Pharmacy Act, 1868, s. 17).

See ARSENIC.

Pole. The same as perch (q.v.).

Police. See CONSTABLE; METROPOLITAN POLICE DISTRICT.

Police Court. A petty sessional court (q.v.), held in London and in a number of the large provincial cities, as well as in some thickly populated semi-urban areas, by a barrister who is known in London as a metropolitan police magistrate (q.v.), and elsewhere as a stipendiary magistrate (q.v.).

Police Magistrate. See METROPOLITAN POLICE MAGISTRATE; STIPENDIARY MAGISTRATE.

Police Supervision. Subjection to police supervision is where a criminal offender is subjected to the obligation of notifying the place of his residence and every change of his residence to the chief officer of police of the district, and, if a male, of reporting himself once a month to the chief officer or his substitute (Prevention of Crimes Act, 1871, s. 8). Offenders subject to police supervision were formerly popularly called habitual criminals: but the term "habitual criminal" (q.v.) has now a precise meaning in the law.

Policies of Insurance, Court of. The preamble of the statute 43 Eliz. c. 12, recited that it had long been the custom of merchants to "give some considercion of money to other persons (which commonly are of noe small number) to have from them assurance made of their goodes, merchandise, ships and things adventured, . . . which course of dealing is commonly termed a policie of assurance," and that the few controversies which had arisen had been settled "by certaine grave and discrete merchants appointed by the Lord Mayor of the Citie of London," until of late years divers persons had sought to compel the parties assured to obtain payment from each of the assurers by means of separate suits in the superior Courts; and the statute then pro-

ceeded to enact that the Lord Chancellor should constitute and keep constituted a Court consisting of the Judge of the Admiralty, the Recorder of London, two doctors of the civil law, two "common lawyers" and eight "grave and discreet merchants," for the summary decision, subject to appeal to the Court of Chancery, of all disputes as to policies of assurance entered at the office of assurances in the City of London. This enactment was amended by the statute 14 Car. 2, c. 23. The Court fell into disuse during the eighteenth century, and both the statutes above referred to were repealed by the S. L. R. Act, 1863.

Policy, as applied to a statute, regulation, rule of law, course of action, or the like, refers to its probable effect, tendency or object, considered with reference to the social or political well-being of the State.

Thus certain classes of acts are said to be against public policy when the law refuses to enforce or recognise them on the ground that they have a mischievous tendency so as to be injurious to the interests of the State, apart from illegality (q.v.) or immorality (q.v.). Thus, trading with an enemy without licence from the Crown, marriage-brokage contracts, and agreements in general restraint of marriage or trade (q.v.), are instances of acts against public policy. The "policy of the law" seems to be the same thing as public policy.

The "policy of a statute," or "of the Legislature," as applied to a statute, means the intention with which a statute was passed or by which Parliament was actuated.

Policy of Assurance. A policy is an instrument containing a contract of insurance, and is called a maritime (or marine), fire, life or accident policy, according to the nature of the insurance.

Maritime policies are either unvalued (or open) or valued (Marine Insurance Act, 1906, s. 27 (1)). An unvalued policy is where the value of the thing insured is not stated in the policy (s. 28), and must therefore be proved if a loss happen. A valued policy is where the value of the thing is settled by agreement between the parties and inserted in the policy (s. 27 (2)). An insurance may be effected either for a voyage or for a number of voyages, in either of which cases the policy is called a voyage policy; or the insurance may be for a particular period, not exceeding twelve months, irrespective of the voyage or voyages upon which the vessel may be engaged during that period, and the policy is then called a time policy; in addition to the two last-mentioned kinds of policy, there is a third, which is usually called a mixed policy, as, for instance, where a ship is insured "from A. to B. for a year," this being in effect a time policy with the voyage specified. Voyage policies, time policies, and mixed policies are all sanctioned by s. 25 of the Act of 1906.

Before the Acts forbidding insurances by persons having no interest in the subject-matter of insurance, it was sometimes provided in the policy that it should be valid whether the insurer had any interest or not, in order to dispense with proof of interest in case of loss; these were called "interest or no interest policies" or "wager policies." See INTEREST; P.P.I.

Life policies for the whole life of the *cestui que vie*, *i.e.*, payable whenever the death happens, are called whole life policies; a policy for a term of years gives no right to the sum insured, unless the life drops within the period.

When a fire insurance is made for a limited period (*e.g.* a year) it is called a time policy. When it is made to insure not any specific goods, but the goods which may at the time of the fire be in a certain building, it is called a floating policy.

As to the assignment of life and marine policies, see ASSIGNMENT.

See ASSURANCE; LOST OR NOT LOST; MEMORANDUM; UNDERWRITER.

Politiæ legibus non leges politiis adaptandæ (*Hob.* 154). (Politics are to be adapted to the laws, and not the laws to politics.) But this, unhappily, is no longer a principle which applies.

Political Offence. For the purposes of the laws under which various offences are punishable within the United Kingdom, there is not, and there never has been, such a thing as a political offence. A person committing any given offence is liable to the one punishment whether he commits it from political motives or from motives which are not political. But, as regards offenders whose extradition to or from this country is sought, there is a clear distinction between political and other offences. Offences of a political character are invariably excepted in extradition treaties from the list of offences for which extradition may be obtained; and the Extradition Act, 1870, s. 3, provides that a fugitive offender shall not be surrendered by this country if the offence for which his extradition is demanded is of a political character. In this country, an offence of a political character

is held to mean any offence committed in connection with or as part of political disturbances; it does not mean an anarchist crime.

See EXTRADITION.

Political Pension. This means a pension which may, in certain circumstances, be granted by the Crown to persons who have held "political offices," that is to say, "offices in the civil service of the Crown which are usually held by members of the House of Lords or the House of Commons" (Political Offices Pension Act, 1869, preamble). No political pension can be granted in respect of service in the permanent civil service, or in the Royal Household, or in any legal office other than that of Judge Advocate-General (s. 1). Political offices are divided into Class 1, being offices with salaries of not less than £5,000; Class 2, being offices with salaries less than £5,000 and not less than £2,000; and Class 3, being offices with salaries of less than £2,000 and not less than £1,000 (s. 2). The Act applies only to offices existing on 9th August, 1869, and to those subsequently created by statute; the salaries of offices existing on 9th August, 1869, are, for the purposes of the Act, to be the salaries then payable unless they are altered by statute (s. 4). The pension for Class 1 is to be a first-class pension of not more than £2,000; for Class 2 it is to be a second-class pension of not more than £1,200; and for Class 3 it is to be a third-class pension of not more than £800 (s. 3). The qualifying period of service for a pension is four years for a first-class pension, six years for a second-class pension, and ten years for a third-class pension (s. 3); service in one class counts, either in whole or in part, as service in another (see s. 4). Not more than four pensions of each class may be paid at any one time, and not more than one pension under the Act may be granted in one year (s. 4). No pension can be granted except upon a declaration of inadequacy of private means (s. 7). Pensions are to be suspended either in the whole or in part where the pensioner receives other income from public sources (s. 6).

Poll. See DEED; CHALLENGE.

Pollock's Act. The popular title of the Limitation of Actions and Costs Act, 1842.

Poll-tax; Poll-money; Poll-silver. A tax upon every poll or head, that is to say, upon every person. Sometimes the tax was levied equally on all persons—as in the case of the poll-tax, which led to the rebellion of Wat Tyler; at other times it was graduated according to the rank of the payer—as in the case of the poll-tax imposed by the statute 18 Car. 2, c. 1, s. 10, which ran from £100 in the case of a duke to £5 in the case of an esquire, and from £50 in the case of an archbishop to £5 in the case of a doctor of divinity.

Pondus regis. (The King's weight.) This was anciently a synonym for troy (q.v.) weight. There seems to have been an idea that troy weight was a corruption of Le Roy weight (though it was actually derived from Troyes, the town at which it first came into use), and this led someone to invent the *pondus regis* as being the true and original form of Le Roy weight.

Pone. A writ whereby a cause pending in the old County Court of the sheriff was removed into the Common Pleas, or sometimes into the King's Bench. There was also the writ of *pone per vadium*, which directed the sheriff to take sureties for the appearance of a defendant. See TOLT.

Ponendis in assisis. A writ granted by the Statute of Westminster II., c. 38. It related to the impanelling of assizes.

Ponendum in ballium. An ancient writ which lay for a prisoner entitled to bail.

Ponendum sigillum ad exceptionem. A writ by which justices (of the superior Courts) were required to put their seals to exceptions (q.v.) taken by a defendant.

Pontage. A payment made or toll levied for the repair of bridges. See TRINODA NECESSITAS.

Pontibus reparandis. A writ which anciently was directed to the sheriff commanding him to cause the owner of a bridge to repair it.

Poor Knights, The. Formerly used as a synonym of the Knights of Windsor (q.v.).

Poor Law is that part of the law which relates to the public or compulsory relief of the indigent poor. The subject has been dealt with in a series of Acts of Parliament from 27 Hen. 8, c. 25, to the present time. By the Poor Relief Act, 1601, overseers of the poor were appointed in every parish, to provide for the relief of paupers settled in their parish (see SETTLE), the necessary funds being produced by a poor rate levied on property within the parish. (See RATE.) The system of overseers being unsatisfactory, the statute 22 Geo. 3, c. 83, authorised any parish to appoint guardians in lieu of overseers, and also to enter into a voluntary union with one or more other parishes for the more convenient accommodation, maintenance and employment of their paupers in common. (See

GUARDIANS OF THE POOR; OVERSEER; VESTRY.) In 1834, the general management of the poor, and of the funds for their relief, was placed under the superintendence and control of a body called the Poor Law Commissioners (q.v.), whose functions were transferred in 1847 to a new authority called the Poor Law Board (q.v.), and in 1871 to the Local Government Board (q.v.), which since 1919 has been represented by the Ministry of Health, who have the power of making general poor law rules (Poor Law Amendment Act, 1834, s. 15), and of compulsorily consolidating any two or more parishes into one union for the relief and management of their paupers (*ib.* s. 26), or of constituting separate parishes out of divided parishes or amalgamating parts of divided parishes with other parishes (Divided Parishes and Poor Law Amendment Act, 1876, ss. 1-9).

All those who stand in need of relief are entitled to be relieved in the parish (or union) in which they happen to be, whether they are "settled" or "casual" poor. (See SETTLEMENT; REMOVAL; IRREMOVABILITY.) But in many cases there is a person bound to maintain a pauper in exoneration of the guardians: as where the pauper has a wife, husband, child, parent, or grandparent, able to maintain him or her. There are also numerous statutes imposing penalties and punishments on persons who refuse or neglect to work to maintain their families, or desert them, leaving them chargeable to the parish.

Poor Law Board; Poor Law Commissioners. The Poor Law Amendment Act, 1834, empowered the Crown to appoint for a period of five years three commissioners styled "The Poor Law Commissioners for England and Wales," to whom was entrusted the administration of that Act and of other laws relating to the relief of the poor. Subsequent statutes continued these commissioners in office until 1847, when they were superseded (under the Poor Law Board Act, 1847) by another body, to which the title of "The Poor Law Board" was given by the Poor Law Amendment Act, 1849, s. 21. The Poor Law Board was also a temporary body, but it was from time to time continued by statute until it was made permanent by the Poor Law Amendment Act, 1867, s. 1. It lasted, however, only until 1871, when its functions passed to the Local Government Board (q.v.).

Poor Law Union. This is defined by the Interpretation Act, 1889, s. 16, as meaning "any parish or union of parishes for which there is a separate Board of Guardians."

"Poor Person." "Any person may be admitted to take or defend or be a party to any legal proceedings in the High Court of Justice as a poor person on satisfying the Court or a judge (1) that he has reasonable grounds for taking or defending or being a party to such proceedings; and (2) that the applicant is not worth a sum exceeding £50 (excluding wearing apparel, tools of trade, and the subject-matter of such proceedings) or such larger sum not exceeding £100 as a judge personally in special circumstances may direct; and (3) that the usual income from all sources of the applicant does not exceed £2 a week or such larger sum not exceeding £4 a week as a judge personally in special circumstances may direct; and (4) in matrimonial causes where the wife is the applicant, in addition to (1), (2) and (3) either (*a*) that the applicant and her husband are not worth the amount specified in (2) and that their joint income does not exceed the amount specified in (3), or (*b*) that it is reasonable in the circumstances that the applicant should be admitted to take or defend or be a party to the proceedings as a poor person: provided always that in cases within (4) (*b*) the order giving leave to take or defend or be a party to such legal proceedings shall be limited to such proceedings as are necessary to enable the applicant to obtain security for her costs of such proceedings or to such further or other proceedings as the judge may direct" (Ord. 16, r. 22). This rule does not apply to any bankruptcy proceeding or matter or to any criminal cause or matter except case stated, *certiorari*, *mandamus* or prohibition, where those matters relate to Courts of summary jurisdiction (*ib.*).

Rules 23-31o, 34A and 45 (4) of Order 16 govern the procedure in "poor person" cases. The poor person has a solicitor and counsel assigned to him free of cost; he pays no costs to the other side except (r. 31E) as specially ordered, and his own costs are limited to out-of-pocket expenses (*ib.*), unless (r. 31I) he recovers money in the case; and he makes no deposit except (r. 23) in matrimonial cases, in which he has to deposit at the least £5 in ordinary cases and £20 at the least in nullity cases involving medical examination.

See POOR PRISONERS.

Poor Prisoners. Where a prisoner is committed for trial and it appears on the depositions that there is a defence of such a nature that he ought to have legal aid, then, if it appears that he has not sufficient means to obtain such aid, the committing justices, or

the chairman of quarter sessions or judge before whom he is to be tried, may certify for such aid and thereupon the prisoner is entitled to have solicitor and counsel assigned to him (Poor Prisoners Defence Act, 1903); and the Court of quarter sessions or assizes may direct the costs of his defence to be paid out of public moneys (Costs in Criminal Cases Act, 1908, s. 1).

Where it appears to the Court of Criminal Appeal that an appellant ought to have legal aid which he has not means to obtain, the Court may assign to him solicitor and counsel or counsel only (Criminal Appeal Act, 1907, s. 10). The registrar of the Court is to report as to any case in which legal aid appears to be necessary (s. 155).

Popular Action. See PENAL ACTION.

Populous Place. This expression was defined by s. 32 of the Licensing Act, 1874, as meaning "any area with a population of not less than one thousand which, by reason of the density of such population, the county licensing committee may by order determine to be a populous place." The part of that section which contained this definition was repealed by s 112 and Sch. VII. of the Licensing (Consolidation) Act, 1910. The latter Act, in Sch. VI. (B) (1) (c), defined it as "an area with a population of not less than one thousand which, by reason of the density of its population, the confirming authority of the county by order determine to be a populous place." The whole of Sch. VI. of the Act of 1910 has been repealed by the Licensing Act, 1921, s. 6, Sch. I., and no such entity as "a populous place" is now known to the licensing laws.

Porrect. In the procedure of the ecclesiastical Courts this means to submit for examination or approval.

Port. A port is a harbour where customs officers are established, and where goods are either imported or exported to foreign countries, as distinguished from a mere harbour or haven, which is simply a place, natural or artificial, for the safe riding of ships. It is said that every port comprehends a city or borough (sometimes called *caput portûs*), with a market and accommodation for sailors. No person may land customable goods on his own land or elsewhere than at a port. The privilege of erecting ports and taking dues and tolls as incident thereto is part of the royal prerogative, and can belong to a subject as a franchise only by grant or prescription from the Crown, or by Act of Parliament. The owner of the port is bound to keep it in repair. See TOLL.

In other respects a port is the same thing as a harbour (q.v.).

See SANITARY AUTHORITY.

Port also in Saxon times meant a city or town. From this use of the word come PORTMEN; PORTMOTE; PORTSOKEN; PORTREEVE; PORTSALE. See those titles.

Portcullis. See HERALDS.

Porterage. See PACKAGE.

Porters. The metage (q.v.) rights of the City of London were exercised through the Company of Porters. The abolition of those rights led in 1894 to the abolition of the Company by an act of the Court of Common Council.

Portgreve; Portreeve. In the time of the Conqueror the authorities of the City of London were the Bishop, the Portgreve, and the burgesses. The portgreve was in fact the predecessor of the mayor, or Lord Mayor. (See LONDON.) The portreeve was everywhere the chief municipal magistrate at the time of the Conquest. In most places he has been replaced by the mayor (see MUNICIPAL CORPORATIONS), but in many small towns he still survives. Crediton, Holsworthy and Tavistock are instances of towns with a portreeve as the chief local officer.

Portion. When land is settled in strict settlement, that is to say, on the husband for life, with remainder in tail to the eldest son, it is usual to provide for the payment to the "younger children" (that is, all except the one who takes the estate) of gross sums of money, on their attaining twenty-one, or, in the case of daughters, marrying. To enable these portions to be raised, the land is generally limited to trustees for a long term of years with power to mortgage it. See SETTLEMENT; TERM.

As to the operation of the rule against double portions, by which a child is prevented from taking both a sum paid to him as a portion and a legacy bequeathed to him as a portion, see SATISFACTION.

Portioner. This is stated to have been one of several ministers who served a parsonage alternately and each of whom got only a portion of the tithes.

Portman-mote. The assembly of the portmen (q.v.) or citizens of a town.

Portmen. In Old English this meant the inhabitants of towns generally, and later it meant the inhabitants of the Cinque Ports in particular. In a narrower sense it meant a citizen having authority within a town: thus

formerly the municipal authority at Ipswich was the Mayor, the Portmen and the Common Council, while at Oxford it was the Mayor, eight Portmen, and twelve Capital Burgesses.

Portmote. This meant either the portmanmote (q.v.) or (more especially in the County Palatine of Chester and in the Cinque Ports) the Court of a town.

Portsale. Literally, a sale in the town. A public sale of goods: more especially a sale of fish at the place where they were landed. See PORT.

Portsoken; Portsokne. The liberties of the City of London which were granted to the City by Henry III. They were outside the walls of the City: thus in the Pleas of the time of Edward I. there is reference to steps for the putting down of murder "within the City and in Portsokne." They now form the Ward of Portsoken. Portsoken is a compound of *port* (in the sense of city or town) and *soca* (jurisdiction), the liberties being within the jurisdiction of the City.

Positive Law. Rules of conduct laid down and enforced by some public authority, as distinguished from such entities as the "law of nature," which is merely a series of propositions as to what the law ought to be. Also known as public law.

Posse comitatus (literally "the power of the county") is an assemblage of the able-bodied male inhabitants of a county, except peers and clergymen. The sheriff of the county may summon the *posse comitatus* either to defend the county against the king's enemies, or to keep the peace, or to pursue felons, or to enforce the king's writ. Persons failing to obey the summons are liable to fine and imprisonment. The use of the *posse* has fallen into disuse in this country as the result of the establishment of the various police forces which have come into existence during the last century: but the power to call out the *posse* is still in the sheriff and is expressly affirmed by the Sheriffs Act, 1887, s. 8 (1).

Possessio fratris. Under the old law of descent, where A had a son and a daughter by one marriage, and another son by a subsequent marriage, and died intestate seised of land in fee simple, then if the eldest son entered on the land and died without issue, the daughter took the land, because the descent was traced from the person last seised; and in this case the younger son, being of the half-blood to his brother, could not inherit to him. This was called a *possessio fratris*, the rule being *possessio fratris de feodo simplici facit sororem esse hæredem* (the possession of the brother makes the sister heir). Now descent is traced from the purchaser (see DESCENT) and not from the person last seised, so that the *possessio fratris* has been abolished.

Possession.—I. In its primary sense, possession is the visible possibility of exercising physical control over a thing, coupled with the intention of doing so, either against all the world, or against all the world except certain persons. There are, therefore, three requisites of possession. First, there must be actual or potential physical control. Secondly, physical control is not possession, unless accompanied by intention; hence, if a thing be put into the hand of a sleeping person, he has not possession of it. Thirdly, the possibility and intention must be visible or evidenced by external signs, for if the thing shows no signs of being under the control of anyone, it is not possessed; hence, if a piece of land is deserted and left without fences or other signs of occupation, it is not in the possession of anyone, and the possession is said to be vacant. The question whether possession of land is vacant is of importance in actions for recovering possession, as in such cases service of the writ is effected (under Ord. 9, r. 9), by posting a copy of it on part of the land. See SERVICE.

Possession does not necessarily imply use or enjoyment; thus a warehouseman has possession of the goods entrusted to him, without having the use of them. But, inasmuch as the use of property cannot be had without possession, the term "possession" is frequently used as implying use and enjoyment, and in this sense is opposed to "reversion," "remainder," "expectancy," "action," etc.; thus a tenant for life in possession is one who has the immediate benefit of the property (*e.g.*, by occupation, receipt of the rents or income, etc.), as opposed to a tenant in remainder, whose right to the enjoyment of the property is deferred (see ESTATE). a chose in possession is a chattel which can be immediately used, such as a book, while a chose in action is merely the right to obtain possession of a chattel, as in the case of a debt. See CHOSE; REDUCTION INTO POSSESSION.

Possession gives rise to peculiar rights and consequences. The principal is that a possessor has a presumptive title, that is to say, is presumed to be absolute owner until the contrary is shown, and is protected by law in his possession against all who cannot show a better title to the possession than he has. Thus, if a person takes possession of a piece

of deserted land no one can eject him from it except the rightful owner, and even he only by taking legal proceedings to prove his title. This is called the right of possession. Ordinarily, possession (unless combined with other elements) does not affect the question of ownership; and therefore if A, being wrongfully in possession of a thing, conveys it to B, B cannot retain it against the true owner, even though he may have believed A to be the true owner and paid him the value of the thing. But in a few cases possession is sufficient to enable a person without title to give a perfect title to a *bonâ fide* acquirer: thus if A steals money or a negotiable instrument from B and transfers it for value to C, who has no notice of the theft, B cannot claim it from C. (See EARMARK; NEGOTIABLE; MARKET OVERT.) So under the Factors Act, 1889 (q.v.), a person in possession of goods belonging to another may, in certain cases, sell or pledge them, so as to give a good title to the purchaser or pledgee. As to long-continued adverse possession, see *infra*.

In criminal law, possession frequently gives rise to a presumption against the possessor, so as to shift the burden of proof on him. Thus the possession of stolen goods, where recent and exclusive, is, in many cases, sufficient to raise a presumption of larceny against the possessor, which he must rebut by showing that he came honestly by them.

(i) With reference to its origin, possession is either with or without right.

1. Rightful possession is where a person has the right to the possession of (that is, the right to possess) property, and is in the possession of it with the intention of exercising his right. This kind of possession necessarily varies with the nature of the right from which it arises; a person may be in possession of a thing by virtue of his right of ownership, or as lessee, bailee, etc.; or his possession may be merely permissive, as in the case of a licensee; or it may be a possession coupled with an interest, as in the case of an auctioneer. So the right may be absolute, that is, good against all persons: or relative, that is, good against all with certain exceptions; thus a carrier or borrower of goods has a right to their possession against all the world except the owner.

In jurisprudence, the possession of a lessee, bailee, licensee, etc., is called derivative possession, while in English law the possessory interest of such a person, considered with reference to his rights against third persons who interfere with his possession, is usually called a special or qualified property, meaning a limited right of ownership. See PROPERTY.

2. Possession without right is called wrongful or adverse, according as the rights of the owner or those of the possessor are considered. Wrongful (or naked) possession is where a person takes possession of property to which he is not entitled, so that the possession and the right of possession are in one person, and the right to possession in another. Where an owner is wrongfully dispossessed, he has a right of action to recover his property, or, if he has an opportunity, he can exercise the remedy of recaption in the case of goods, or of entry in the case of land (see RECAPTION; ENTRY). Formerly the doctrine of wrongful possession was of more importance than now, owing to the peculiar rules applicable to disseisin, intrusion, feoffments, etc. See ADVERSE POSSESSION.

(ii) With reference to the mode of its exercise, possession is of several kinds.

1. A person has actual possession (*de facto* possession, possession in fact) of a thing when he exercises physical control over it. Thus a person who holds a thing in his hand has actual possession of it, and the lessee of a house is in actual possession of it while he occupies it.

2. A person has constructive possession (or possession in law) (1) when someone representing him has actual possession of the thing. Thus if A, the owner of the land, leases it to B, A has constructive possession by B, and if A dies intestate leaving C his heir, C is immediately in constructive possession of the land by B, although he has never had actual possession; (2) a person may have construc tive possession of one thing because he has actual possession of another; thus if a person is in legal possession of a house he is ordinarily in constructive possession of the goods in it, or if he is in legal possession of a portion of an estate or farm he is in constructive possession of the whole of it.

3. Joint or concurrent possession is where two or more persons have possession of the same thing at the same time.

4. Under the Bills of Sale Acts, the validity of an unregistered bill of sale frequently depended upon whether the owner of the goods remained in "apparent possession" of them, having merely given "formal possession" to the creditor. Thus where the holder of an unregistered bill of sale of furniture put a man into the house, but did not interfere with the furniture in such a manner as to show that it had been taken out of the

debtor's control, it was held that the possession so taken was merely formal, and that the goods remained in the apparent possession of the debtor. (See BILL OF SALE.) This doctrine of apparent possession now applies only to bills of sale to which the Bills of Sale Act (1878) Amendment Act, 1882, does not apply.

As to possession in the law of bankruptcy, see ORDER AND DISPOSITION; REPUTED OWNER.

5. In criminal law, possession is sometimes distinguished from custody. Thus if the owner of a chattel gives it to his servant to keep for him for a specific purpose or until he requires it again, the chattel is in the custody of the servant and in the possession of the master; if, however, the servant receives anything for his master from a third person (not being a fellow-servant), *e.g.*, a tradesman, he has the possession and not merely the custody of it until he places it in his master's possession by putting it into a place or thing belonging to his master, or by some similar act The importance of the distinction is with reference to the difference between larceny and embezzlement (q.v.): and see CUSTODY.

II. Possession is sometimes used in the old books in the technical sense of seisin or feudal possession of land. "It is to be knowne," says Coke, "that there is a *jus proprietatis*, a right of ownership, *jus possessionis*, a right of seisin or possession, and *jus proprietatis et possessionis*, a right both of property and possession: and this is antiently called *jus duplicatum*, or *droit droit*. For example, if a man be disseised of an acre of land, the disseisee hath *jus proprietatis*, the disseisor hath *jus possessionis*, and if the disseisee release to the disseisor, hee hath *jus proprietatis et possessionis.*" (*Co. Litt.* 226A.) See SEISIN; DROIT; POSSESSIO FRATRIS.

III. Possession was also sometimes opposed to seisin. "The difference," says Noy, "between possession and seisin is: lessee for years is possessed, and yet the lessor is still seised; and therefore the terms of law are, that of chattels a man is possessed, whereas in feoffments, gifts in tail, and leases for life, he is described as seised." (*Noy's Max.* 64.)

See ENJOYMENT; QUASI-POSSESSION.

Possession money is the fee to which a sheriff's officer is entitled for keeping possession of property under a writ of execution. It is fixed at five shillings per day by the Order as to Fees made 31st August, 1888, under the Sheriffs Act, 1887.

Possession (of Ships). The Admiralty Court Act, 1840, s. 4, gave, for the first time, the Admiralty Court (now the Admiralty Division) jurisdiction to decide all questions as to the title to or ownership of ships. Before the Judicature Acts, only legal owners could institute a suit to recover possession of a ship: but now, under ss. 24 and 25 of the Judicature Act, 1873, equitable interests in ships are put on the same footing as legal interests.

Possession, Writ of. This is the writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment. It is issued under Ord. 47, r. 1, and is in the form set out in App. H., No. 8. See HABERE FACIAS POSSESSIONEM; WRIT OF DELIVERY; EXECUTION.

Possessory is that which arises out of or is concerned with possession. Thus a possessory action, in the days of real actions, was an action to recover the possession of land (see DROIT). An action of possession is a different thing; it is one in which a person claims possession of a ship either against one wrongfully in possession or against a co-owner. (See POSSESSION OF SHIPS.) As to possessory liens, see LIEN.

Possibility is a future event, the happening of which is uncertain. In the law of real property, the term also signifies an interest in land which depends on the happening of such an event. In this sense, a possibility is said to be either bare or coupled with an interest Thus, the expectation of an eldest son of succeeding to his father's land is a bare possibility, which is not recognised by law as being capable of transfer, though it may form the subject of a covenant to settle after-acquired property. If land is conveyed to A for life, and if C should be living at his death, then to B in fee, B's contingent remainder is a possibility coupled with an interest: such a possibility may be devised by will or conveyed by deed.

In the old books a distinction is drawn between (i) a common or near possibility, and (ii) a double or remote possibility, or possibility on a possibility. Thus, the chance that a man and a woman, both married to different persons, shall themselves marry one another, is a common possibility, and therefore a gift to two such persons, and the heirs of their two bodies, gives them an estate tail; but "if," says Coke, "land is given to a man and two women and the heires of their bodies begotten, in this case they have a joynt estate for life and every of them a severall inheritance, because they cannot have one issue of their bodies, neither

shall there be by any construction a possibility upon a possibility, viz., that he shall marry the one first and then the other." (See further as to the effect of a gift of this kind, under titles ESTATE TAIL; INHERITANCE.) When an estate in fee simple conditional at common law is created, the donor has what is called a possibility of reverter, as to which see REVERTER.

Formerly, also, there was a rule that a contingent remainder could not be created to take effect on the happening of a double possibility. But this is now obsolete.

See TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT.

Post. As to contracts entered into through the post, see LETTER. As to actions "in the *post*," see WRIT OF ENTRY.

Post diem. This was where a writ was returned after the day assigned: thereupon the *Custos Brevium* (q.v.) received a fee of fourpence.

Post Disseisin. This was a writ which formerly lay for one who, having recovered lands by *præcipe* (q.v.) *quod reddat*, on default or reddition, was again disseised by the former disseisor: under it, the party suing it out got double damages and the disseisor was imprisoned.

Postea, in the common law practice before 1873, was a formal statement, indorsed on the *nisi prius* record, which gave an account of the proceedings at the trial of the action. Under the present practice, the associate makes an entry of the findings of the jury, and of the directions and certificates given by the judge at the trial, in a book kept for that purpose. See CERTIFICATE.

Post Entry. A corrective entry (q.v.) made to the Customs authorities by an importer whose original entry is found to be erroneous.

Posteriority. "Posteriority," wrote Cowel in 1607, "is a word of comparison and relation in tenure, the correlative whereof is prioritie. For a man holding lands . . . of two lords, holdeth of his auncienter lord by prioritie, and of his later lord by posterioritie," and when he died the "auncienter lord" had the wardship of the heir.

Post Fine. The payment made for the *licentia concordandi* upon the levying of a fine (q.v.).

Posthumous. See IN VENTRE SA MÈRE.

Postliminium is the name given to the rule of international law by which, in certain cases, persons or property captured by an enemy revert to their original owner, when recaptured from the enemy by individuals belonging to the nation from which they were captured. To what cases the rule is applicable depends to a great extent on the practice of each particular nation: for it properly belongs to private international law, though the term *postliminium* is also said to apply to those cases where captured property has come into the hands of neutrals, and is reclaimed by the belligerent from whom it was taken. As to the English law on the subject, see RECAPTURE.

Post litem motam. See LIS MOTA.

Postman. A junior barrister in the Court of Exchequer who, except in Crown business, had precedence in motions. The office ceased to exist when the Court of Exchequer, as the result of the Judicature Acts, was merged in the Queen's Bench Division, but the judges intimated that whenever a Divisional Court sat in what had been the Court of Exchequer, the barrister who had held the post was to have his old precedence. The last postman was Sir Charles Hall, Recorder of London, 1892-1900. The postman took his name from the fact that his place in the Court of Exchequer was by the post anciently used as a measure of length in excise cases. See TUBMAN.

Postmaster-General. This official is the modern representative of the Master of the Posts (q.v.). He comes into and goes out of office with the ministry of the day and is sometimes a member of the Cabinet. He is not disqualified for membership of the House of Commons (Representation of the People Act, 1867, s. 52, Sch. II: see OFFICE OF PROFIT). He is the head of the Post Office (q.v.). Each successive Postmaster-General is appointed by letters patent (Post Office Act, 1908, s. 33 (1)). There is also an Assistant Postmaster-General, who likewise can sit and vote in the House of Commons (Assistant Postmaster-General Act, 1909 (9 Edw. 7, c. 14)). The salary of the Postmaster-General is £2,500, and that of the Assistant Postmaster-General is £1,200.

Post-mortem Examination. A medical examination of a corpse in order to discover the cause of death. It may be ordered by a coroner (q.v.) under s. 21 of the Coroners Act, 1887.

Post-nati. See CALVIN'S CASE.

Post-note. A species of bank-note, intended for transmission by post, which is payable to order on a future specified date instead of to bearer on sight, as in the case of the ordinary bank-note. The term seems to be confined to the United States. The British equivalent is a Bank Post-Bill (q.v.)

Post-obit. This is a money bond conditioned

for payment at or after the death of some person other than the giver of the bond. It is a form of *quasi*-security not infrequently given to a money-lender by an expectant heir (q.v.). See CATCHING BARGAIN.

Post Office. This department, which is under the management of the Postmaster-General (q.v.), has a monopoly in the transmission of all letters and telegraphic and telephonic messages in the United Kingdom. Its monopoly as regards letters rests at present on the Post Office Act, 1908, s. 34; as regards its monopoly of telegraphs and telephones, see those titles. It also carries on the business of a savings bank, life insurance business, annuity business, and the sale of money orders and of postal orders for the transmission of money. It acts as a carrier of parcels, pays old age pensions, and performs several other public services.

See PENNY POST.

Post terminum. This was the return of a writ, not merely after the day assigned (see POST DIEM), but after the end of the term in which that day fell. In that case the *Custos Brevium* (q.v.) received a fine of twenty pence, and the fine was also known as a *post terminum*.

Potestas suprema seipsam dissolvere potest, ligare non potest (*Bac. Max. Reg.* 19). (The supreme power may loose, but cannot bind, itself.) Compare PERPETUA, ETC.

Pothier. Robert Joseph Pothier was born on the 9th January, 1699, at Orleans, where he afterwards became professor: he died on the 2nd March, 1772. He wrote *Pandectæ Justinianeæ in novum ordinem digestæ*: and treatises on many important branches of private law: they enjoy considerable reputation. Complete editions of his works were published in 1820-22, 1825, 1845 and 1861.

Potior est conditio defendentis. (The condition of a defendant is better.) Where a plaintiff can succeed only as the result of either an illegal or a disgraceful course of conduct the Court will not decide in his favour, even though the conduct of the defendant be equally discreditable. Compare EX TURPI CAUSÂ.

Potior est conditio possidentis. (The condition of one in possession is the better.) This maxim is mentioned in *Williams on Executors* (11th ed.), p. 797, as an alleged source of the doctrine of retainer (q.v.).

Potwaller; Potwalloper. This meant one, either a householder or a lodger, who provided his own food and cooked it at his fireplace. Such persons were entitled to the parliamentary electoral franchise in some boroughs. The rights of existing potwallers were preserved by s. 33 of the Representation of the People Act, 1832; but all such persons are now long since dead. Compare FAGGOT VOTE; see ELECTORAL FRANCHISE.

Pound. A pound is a building or piece of land where goods which have been seized as distress are placed by the distrainor; as soon as this has been done, the goods are in the custody of the law. See RESCUE; POUND-BREACH.

A pound is either overt (open) or covert (close). A pound overt is practically only used for cattle, and may be either a common pound overt, which is a pinfold or structure of wood made for such purposes on a public piece of land: or a special pound overt, which is where the cattle are impounded (under the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 10) on the land where the distress was made, or on that of the distrainor, or of some other person by his consent, in which two latter cases the distrainor must give notice to the owner of the cattle, because where cattle are impounded in a pound overt their owner is bound to supply them with food and drink. A pound overt is so called, either because it is open overhead (which seems to be the true reason), or because the owner of the cattle may go to it wherever it is, without being liable for a trespass. A pound covert or close is where the distrainor impounds the cattle or goods in some part of a house (*e.g.*, a stable), and then he is bound to supply the cattle with food and drink. Goods which are liable to be damaged by the weather or stolen must always be impounded in a pound covert.

Formerly a distrainor could not impound the distress on the land of the tenant, but had to remove it. Now, however, the distrainor may convert any part of the premises, upon which a distress is taken, into a pound *pro hac vice* (Act of 1737, s. 10).

Pounds may be used for the confinement of cattle found *damage feasant*, for stray cattle on highways, and also for stray cattle found by the police in any place to which the Town Police Clauses Act, 1847, applies.

At common law neither the person impounding an animal nor the pound-keeper was obliged to feed it, and no charge could be made for its keep. Now any person who impounds an animal is bound to supply it with food and water; on his default, anyone can enter the pound and feed the animal, and the cost of the food can in either case be recovered from

the owner (Protection of Animals Act, 1911, s. 7).

See PARCO FRACTO, DE.

Poundage is a fee payable to an officer of a Court, or to the public revenue, in respect of services performed by the officer: it is so called because it is calculated at so much for every pound sterling of the amount with which he has to deal. Thus a sheriff on executing a *fieri facias*, is entitled to a poundage of one shilling in the pound if the sum levied does not exceed £100, and sixpence in the pound above that sum (Sheriffs Act, 1887, s. 20 (2), and rules thereunder made).

Historically, poundage was a duty at the rate of so much (usually twelvepence) per pound sterling upon the value of merchandise (other than wine) imported into the kingdom. The statutes which granted it also invariably granted tonnage (q.v.) as well, the two being known as tonnage and poundage.

Poundagium. The liberty (or right) of impounding cattle.

Pound-breach is the act of taking goods out of a pound before the distrainor's claim has been satisfied, and that whether the distress was lawfully made or not, because impounded goods are in the custody of the law. The distrainor's remedy is either by action for treble damages under the Sale of Distress Act, 1690, s. 4, or by proceedings for a penalty before justices under the Pound-Breach Act, 1843. See DOUBLE DAMAGES; RESCUE.

On the criminal side, pound-breach to rescue cattle distrained or found *damage feasant* is an indictable misdemeanour, but is now always dealt with summarily under the Pound-Breach Act, 1843.

Where the cattle are impounded under the Town Police Clauses Act, 1847, s. 24, pound-breach is punishable summarily under s. 25 of that Act; and where they have been found straying on the highway and have been impounded under the Highway Act, 1864, s. 25, pound-breach is also punishable summarily under the Highway Act, 1835, s. 75.

Pound (Weight). The imperial standard pound, as ascertained in accordance with s. 13 of the Weights and Measures Act, 1878, weighs 7,000 grains, and is the unit from which all other measures of weight are ascertained.

Up to the reign of Edward III. the pound of 5,760 grains, made up of twelve ounces each containing 480 grains, was in general use. After that period this ounce was reserved for precious metals, and the pound of 7,000 grains came into use for other substances.

Pour fair proclaimer que null inject fimes ou ordures en fosses ou rivers pres cities. A writ directed to the mayor or bailiff of a city or town requiring him *To make proclamation that none should throw filth or ordure into ditches or rivers near cities*. It was founded on the statute 12 Rich. 2, c. 13, repealed by the statute 19 & 20 Vict. c. 64 and S. L. R. Act, 1875.

Pourpresture. See PURPRESTURE.

Pour seisir terres la femme qui tient in dower. (To seise the lands held by the wife in dower.) A writ which lay for the king when the widow of a tenant *in capite* had remarried without the king's leave.

Poursuivants. See HERALDS.

Purveyance. See PURVEYANCE.

Powdike. In Norfolk, west of the Great Ouse, there were three embankments built to keep the waters of the fens out of the tract, in the Isle of Ely, known as Marshland There was the Old Powdike, built about 1225; the New Powdike, built about 1425; and the Little Powdike, adjoining the Old Powdike. The statute 22 Hen. 8 made it felony to injure them.

Power is sometimes used in the same sense as "right," as when we speak of the powers of user and disposition which the owner of property has over it; but strictly speaking a power is that which creates a special or exceptional right, or enables a person to do something which he could not otherwise do. Powers are either public or private.

I. Public powers are those conferred by the Crown, by the Legislature (parliamentary powers), or by a delegate of the Crown or Legislature, such as the Privy Council or Board of Trade, for a public purpose, *e.g.*, the construction of a railway. When a parliamentary power authorises acts by which the rights of private persons may be affected against their will, it is called a compulsory power; such are the powers given to railway companies for the compulsory purchase of land required for their undertakings. See ACT OF PARLIAMENT.

II. Private powers are those conferred on private persons. Some are created by the parties themselves, in which case the person conferring the power is called the donor, and the person to whom it is given the donee; others are statutory, that is, conferred by statute.

Powers must be distinguished from trusts: "powers," says Wilmot, L.C.J., "are never imperative—they leave the act to be done at the will of the party to whom they are given.

Trusts are always imperative." (*Wilm.* 28.) Powers are, however, sometimes divided into (i) mere, bare or naked powers (or powers in the proper sense of the word), and (ii) powers coupled with a trust, or powers in the nature of trusts, which the donees are bound to exercise; they are, therefore, really trusts, and are powers only in form.

Powers are of two principal kinds, viz. (1) those which are by law incident to an office (sometimes called general powers), such as the ordinary powers of directors, solicitors, guardians, executors, trustees, etc.; and (2) those conferred specially (special powers), such as a power of sale or leasing, or an authority conferred by a power of attorney, procuration, warrant, etc. Special powers are of infinite variety, but for practical purposes they may be divided into those which enable the donees to create or modify estates or interests in property (called in conveyancing "powers" *par excellence*), and those conferred for other purposes.

A. Powers which enable the donees to create or modify estates or interests in property "confer," says Mr. Sugden, "the right of alienation as opposed to that of enjoyment": that is, the power enables the donee to declare in whom and in what manner the property is to vest, but gives him (*qua* donee) no right of ownership over it. Such a power is said to be legal when it operates upon or passes the legal estate in the property, and equitable when it only operates on or passes a beneficial or equitable estate or interest.

(a) Legal powers (which are confined to land) operate either under the Statute of Uses, under the Wills Act, 1837, or by custom. Powers under the Statute of Uses operate in the following manner: if land is conveyed to A and his heirs to such uses as B shall appoint, and B appoints or declares the uses to C for life, and after C's death to himself in fee, then the legal estate passes to C for his life with remainder to B, as if the estates had been originally so conveyed to them. (See APPOINTMENT, POWER OF; USE.) Powers operating under the Wills Act, are similar to those operating by way of use, except that they can be created and take effect with greater freedom; thus, if a testator charges his real estate with the payment of his debts the executor takes a power of sale over it. Powers operating by virtue of a custom (*e.g.*, a custom applicable to copyholds) resemble those under the Statute of Uses in their effect, but they are less flexible in their application.

Legal powers are (α) appendant or appurtenant when the donee has an estate in the land and the power is to take effect wholly or in part out of that estate, as in the case of a tenant for life having a power of leasing, or a mortgagee having a power of sale; (β) in gross or collateral, either (i) where the donee has an estate in the land, but the power does not take effect out of it, as where a tenant for life has power to appoint an estate to commence after his death, or (ii) where the donee has no present estate, but may exercise the power for his own benefit; (γ) merely collateral or naked, where the donee neither has an estate nor can exercise the power for his own benefit, as in the case of executors having a mere power of sale. If lands are devised to an executor with a trust or power of sale, this is sometimes called a power coupled with an interest, to distinguish it from a bare or naked power. This classification of powers is of importance with reference to the ability of the donee to release, suspend or extinguish the power. Thus, executors who have a merely collateral power to sell land cannot release or extinguish it.

By s. 52 of the Conveyancing Act, 1881, a person to whom any power, whether coupled with an interest or not, is given, may by deed release it, or contract not to exercise it. This provision does not apply to so-called powers coupled with a trust.

(b) Equitable powers are analogous to legal powers. Thus, if land or stock is vested in trustees upon such trusts as B shall appoint, and B appoints it to C, the legal ownership of the land or stock remains in the trustees, but the equitable ownership passes to C, and he can compel the trustees to convey the land or transfer the stock to him.

Powers are also divisible into (a) powers of revocation, which give only the right of revoking existing estates, and (b) powers of appointment, which enable the donees to create or appoint new estates. When a power of appointment is not preceded by an existing estate, it is sometimes called a primary power; when it is preceded by an existing estate which the donee may revoke, it is called a power of revocation and new appointment, or a subsidiary power. As to the operation of appointments with reference to the rule against perpetuities, see APPOINTMENT.

Powers are either general (that is to say, absolute) or limited. A general power enables the donee to appoint the property to any person or persons (including himself), for any estates, and on any conditions, and is there-

fore equivalent to ownership. If he dies having exercised it by will in favour of a volunteer, or if he becomes bankrupt, the power forms part of his assets (q.v.) for payment of his debts. See ASSETS.

A limited power is either special or particular. A special power is one which is restricted as to the nature or duration of the estates or interests to be created under it, as in the case of the power to grant leases for terms in excess of those permitted by the Settled Land Act, 1882, which are frequently given to the tenant for life under a settlement. A particular power is one which is restricted as to its objects or the persons in whose favour it may be exercised, as in the case of a power to appoint property among a certain class only (*e.g.*, the children of the donee); but the terms "special" and "particular" are frequently used as synonymous. When a power of appointment among a class requires that each shall have a share, it is called a distributive or non-exclusive power; when it authorises, but does not direct, a selection of one or more to the exclusion of the others, it is called an exclusive power, and is also distributive; when it gives the power of appointing to a certain number of the class, but not to all, it is exclusive only, and not distributive. A power authorising the donee either to give the whole to one of a class, or to give it equally amongst such of them as he may select (but not to give one a larger share than the others), is called a mixed power. Formerly, if the donee of a non-exclusive power excluded one of the objects from his appointment, or only gave him an illusory share, the appointment was held void; but this rule has been abolished. (See APPOINTMENT.) As to frauds on powers, see FRAUD.

B. Powers not given for the purpose of creating or modifying estates or interests in property are of great variety. In most cases their names explain themselves. Thus, a power of appointing new trustees is incident to every modern settlement created by will or deed, either by express provision, or by statutory enactment. So a power of distress and entry may be inserted in a deed to enable the donee to enter and distrain on certain land of the donor, to enforce the performance of some covenant, *e.g.*, the payment of an annuity. (See DISTRESS.) For other examples of powers, see POWER OF ATTORNEY.

Power of Attorney is a formal instrument by which one person empowers another to represent him, or act in his stead for certain purposes. A power of attorney is usually a special instrument in the form of a deed poll, but it may form part of a deed containing other matter; thus a deed of dissolution of partnership often contains a power of attorney from the retiring to the continuing partner, to enable the latter to wind up the business, and collect the assets. A power which authorises the execution of a deed or the transfer of stock at the Bank of England must itself be conferred by deed. It is always well that the execution of the power of attorney should be attested by two witnesses; and, for the transfer of stock at the Bank of England, the power of attorney must be so attested.

The donor of the power is called the principal or constituent; the donee is called the attorney. As a general rule, either an infant or a married woman may be an attorney.

A power of attorney which authorises the attorney to do all acts of a certain class from time to time, such as to carry on a business, collect debts, etc., is sometimes called a general power, as opposed to a special or particular power, or one which is confined to a specified act or acts. A limited power is one containing precise instructions as to the mode of executing it, while an unlimited power leaves this to the discretion of the attorney.

As to the persons who can empower others to act for them by power of attorney, see AGENT; AUTHORITY; DELEGATUS NON POTEST DELEGARE; MINISTERIAL. As to the cases in which a power of attorney is revocable, see AUTHORITY; REVOCATION. Under the Trustee Act, 1893, s. 23, a trustee (or an executor or administrator (see s. 50)), making any payment or doing any act *bonâ fide* in pursuance of a power of attorney, in ignorance of the death of the person who gave the power, or of his having done some act to avoid it, is not liable for the money so paid, or the act so done: see also s. 47 (*post*) of the Conveyancing and Law of Property Act, 1881.

The Conveyancing and Law of Property Act, 1881, contains the following provisions in regard to powers of attorney. The donee of a power of attorney may act in and with his own name, signature and seal instead of the name, signature and seal of the donor (s. 46). Any person making or doing any payment or act in good faith, in pursuance of a power of attorney, is not to be liable by reason that the donor of the power had previously died, or become lunatic, or bankrupt, or revoked the power, provided such fact was not known to him at the time (s. 47). A power of attorney may be deposited in the Central Office of the Supreme Court, on its execution being verified

by affidavit or otherwise. The file of powers so deposited may be searched, and an office copy of any power obtained, by any person on payment of the office fees. An office copy is sufficient evidence of the contents of the original instrument (s. 48). A married woman, whether an infant or not, is to have power, as if she were unmarried and of full age, to appoint an attorney on her behalf to do anything which she herself might do (s. 40).

The Conveyancing Act, 1882, provides (s. 8) that a power of attorney given for value may be made irrevocable in favour of a purchaser, that is to say, a mortgagee, lessee, or other person dealing for value, and (s. 9) that a power of attorney, whether given for value or not, may be made irrevocable in favour of a purchaser for a time not exceeding one year

A company can give a power of attorney for the performance of acts which are merely ministerial, but not for the doing of anything involving the exercise of a discretion: if incorporated under the Companies Consolidation Act, 1908, it can (see s. 78) give a power of attorney for the execution of a deed abroad.

Power of the County. See POSSE COMITATUS.

P.P.I. (Policy proof of interest.) A P.P.I. policy of marine insurance was one which was good as against the underwriter, even though the insurer had no insurable interest in the ship or cargo. The effect of the Gaming Act, 1845, s. 18, was to make a P.P.I. policy void if in fact there was no insurable interest: the Marine Insurance Act, 1906, s. 4, is to the like effect, and now any person without insurable interest effecting a marine insurance commits an offence. See INTEREST.

Practice. The law of practice or procedure is that which regulates the formal steps in an action or other judicial proceeding. It therefore deals with writs of summons, pleadings, affidavits, notices, summonses, motions, petitions, orders, trial, judgment, appeals, costs and execution. In jurisprudence it forms part of adjective law. See LAW.

Practice Court. Better known as the Bail Court (q.v.).

Præbendam, In. See PREBEND.

Præcaria bedrepium = Bederepe (q.v.).

Præcipe, in the practice of the High Court, is a slip of paper on which a party to a proceeding writes the particulars of a document which he wishes to have prepared or issued; he then hands it to the officer of the Court whose duty it is to prepare or issue the document. Thus, when a party wishes to issue a writ of execution, he must file a *præcipe* containing the title of the action, the reference to the record, the date of the judgment, and the name of the party against whom the execution is to be issued (R. S. C., Ord. 42, r. 12).

In admiralty actions *præcipes* are longer and more important than in other actions.

Formerly a *præcipe* was a species of original writ, so called because it required the sheriff to command the defendant either to do a certain thing or to show cause why he had not done it; *e.g.*, the *præcipe quod reddat*, commanding the defendant to give up land to the demandant, which was the writ by which a common recovery was commenced against the tenant of the freehold. In order to have a recovery with double voucher to ban an entail, it was usual for the tenant in tail to convey an estate of freehold to a friend against whom the *præcipe* was brought; this was called making a tenant to the *præcipe* (q.v.). See RECOVERY; VOUCHER.

The instructions for issuing an original writ consisted of a copy of the writ required, and therefore began with the word "*præcipe*"; hence probably the use of the word in its modern sense.

Præcipe in capite. This was a writ issuing out of the Chancery for a tenant *in capite*. See NON INTROMITTENDO, ETC.

Præfine; Prefine. A fee payable on the issue of the writ which formed the first part of a fine (q.v.). It was usually about one-tenth of the annual value of the lands sued for. Known also as *primer fine*.

Præjuramentum = Antejuramentum (q.v.).

Præmunire. This is the offence of directly or indirectly asserting the supremacy of the Pope over the Crown of England, as by procuring excommunications or bulls from Rome. The punishment is for the offender to be put out of the king's protection, to forfeit his lands and goods to the king, and to be imprisoned. The mandatory part of the writ grounding a prosecution used to enforce the provisions of the Acts against *præmunire* began *præmunire facias*, "that you cause [the accused] to be forewarned"; hence the name. It is now quite obsolete.

Various other Acts not coming within the definition of *præmunire* given above have been declared to be *præmunires*. Thus it is a *præmunire* (13 Car. 2, c. 1) to assert that both Houses of Parliament can legislate without the King or (Habeas Corpus Act (31 Car. c. 2)) to send a subject, a prisoner, out of the realm without lawful authority.

Præmunire, Statute of. The popular title

of the statute 16 Rich. 2, c. 5. It is the basis of the law as to *præmunire*.

Præpositus. Literally, one put in front. In Anglo-Saxon and Norman times the word is used in the records as meaning a principal officer of various kinds. There was the *præpositus villæ*, which meant the steward or bailiff of a lord of the manor; the *præpositus regius*, who was the chief representative of the king in a hundred or town; and the *præpositus ecclesiæ*, who was a church-reeve (see REEVE) or churchwarden.

Præsentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis (*Bac. Max. Reg.* 25). (The presence of the body cures error in the name: the truth of the name cures error of description): which may be freely translated as meaning that if you have the right man it does not matter that you have called him by a wrong name, and that if you mention the right thing it does not matter that you have made an error in describing it. Thus, where one on the jury panel is erroneously called and sworn in the name of another who is also on the panel, the error is immaterial; and a legacy of something which can be clearly identified is not invalidated by error in description of details. Compare FALSA DEMONSTRATIO, ETC.

Præstita Rolls. "Rolls" in the Record Office containing lists of payments made by the Exchequer to royal officials between 1199 and 1603.

Præsumptio violenta valet in lege (*Jenk. Cent.* 56). (Strong presumption avails in law). This is quoted in a context which has no application to modern law. See PRESUMPTION.

Pray in Aid. See AID; PRAYER.

Prayer Book. The Sarum Missal and Breviary was drawn up in 1085 for the Cathedral Church at Salisbury. This was in most general use throughout England at the time of the Reformation. It formed the basis of the Prayer Book of Edward VI., published in 1548; and the statute 2 & 3 Edw. 6, c. 1 (popularly known as the Book of Common Prayer Act, 1548) enacted that only the services mentioned in this Prayer Book should be used. The Prayer Book was suppressed by Mary; Elizabeth revived it, with alterations, by the Act of Uniformity (1 Eliz. c. 2), in 1558. Under the Act of 1558, Elizabeth made alterations in 1561, and James I. made some more in 1604. The Puritans suppressed the book, but after the Restoration it was revived, in substantially the modern form, by the Act of Uniformity, 1662 (14 Car. 2, c. 4). Modern enactments on the subject are the Table of Lessons Act, 1871, and the Act of Uniformity Amendment Act, 1872.

Prayers for the Dead. The House of Lords decided in 1919 that a bequest of personal estate for masses for the dead is not a gift for superstitious uses, and is not void.

Prayers for the dead are not expressly prohibited by the Church of England, but they are discouraged. "Mortuary celebrations" of the Holy Communion "for the repose of the departed" were condemned in 1870, and in 1903 the ecclesiastical Court authorised the removal of a tombstone inscribed "*Of your charity pray for the souls of* ——." So far back as 1838, however, the ecclesiastical Court had refused authority for the removal of a tombstone inscribed "*Pray for the soul of* ——"; and in 1894 a compromise had been effected in another case by a refusal to sanction the use of the words "*Pray for the soul of* ——," but by permission being given for the substitution of the inscription "*Requiescat in pace.*"

Preamble of a Bill in Parliament is that part which contains the recitals showing the necessity for the Bill. It, unlike the marginal notes (q.v.), is part of the statute and may be used in order to ascertain the meaning. Preambles are now the exception rather than the rule. Formerly they were often of great length, and those in early statutes are frequently of historical value. See "S. L. R."

When a private Bill is referred to a select committee, and is opposed on the question of its general expediency, the promoters have to adduce arguments and evidence in support of it; this is called proving the preamble. If it is not proved, the Bill is generally rejected by the House.

Pre-audience. The right of pre-audience in a Court of law is the right which one person has of being heard before another, in business which is not set down to be heard in a particular order—*e.g.*, motions. Thus the Attorney-General has precedence of other counsel in most matters, King's counsel over junior barristers, etc. See POSTMAN; TUBMAN.

Prebend; Prebendary. A prebend is an endowment of land or money held by a cathedral or collegiate church *in præbendam*, that is to say, for the maintenance of a canon known as a prebendary. The word prebend came to mean also both the prebendary and the annual payment which he received from the endowment; but the word is properly and usually applied to the endowment. There are simple prebendaries, being those who have no cures of souls and no clerical incomes

except such as are received by them as prebendaries, and dignitary prebendaries, being those who have cures of souls as well as prebends.

Precariæ. Days in harvest-time on which the tenants of some manors were obliged to work for the lord. Also known as Bind Days.

Precatory. See TRUST.

Precedence, Patent of. Letters patent of precedence are grants whereby the Crown assigns to some person a rank higher than that to which he is otherwise entitled. See KING'S COUNSEL; SERJEANTS-AT-LAW.

Precedence, Scale of. The table showing the order in which various persons take rank at official and social functions. For England it commences, of course, with the Sovereign and ends with "gentlemen." It is to be found, in an abbreviated form, in *Whitaker's Almanack*, and, in full, in the various "Peerages." See PRIME MINISTER.

There are other scales of precedence for India and the Colonies.

Precedent. A judicial precedent is a judgment or decision of a Court of law cited as an authority for deciding a similar state of facts in the same manner, or on the same principle, or by analogy. The original rules of common law and equity are contained in precedents established by the Courts, that is, they have to be arrived at by ascertaining the principle on which those cases were decided. See LAW; REPORT.

In conveyancing, a precedent is a copy of an instrument, used as a guide in preparing another instrument of a similar description.

As to "conditions precedent" see CONDITION.

Prece partium. (At the request of the parties.) Used in the statute 13 Edw. 1, c. 27.

Precept. A precept is an order or direction given by one official person or body to another, and requiring him to do some act within his province.

Thus rates levied by school boards, sanitary authorities, and the like, are collected by the overseers of the respective parishes in accordance with precepts issued to them, because they, as collectors, of the poor rate, have the materials and machinery available for the collection of other rates. So jurors for the trial of actions in the High Court are summoned by the sheriff under precepts directed to him by the judges.

Précepte d'Assize. This is the title of an ancient collection of records which, as from a date soon after 1205, set out a series of decisions or statements of the Royal Court of Guernsey as to the customary laws of that island. It was popularly supposed that these statements were approved by officials sent to the island in 1340 under a *Précepte d'Assize* of Edward III. and afterwards by various justices in eyre; but this does not appear to be the case. The *Précepte* is, however, a valuable record of the customary law of the island from an early date and, together with the *Approbation des Loix* (q.v.), is one of the sources of the laws of Guernsey. See GRAND COUSTUMIER.

Preces primariæ. In the Holy Roman Empire the emperor had the right—known as *preces primariæ*—of presentation to the first prebend in every cathedral which fell vacant after his accession. Edward I. is said to have exercised a similar right in England; and this is stated to have been the origin of the Crown's right of Corody (q.v.).

Precognitors. See ASSISE, GRAND.

Pre-contract. A contract preceding another. The term was used in the ecclesiastical law, which made an existing contract of marriage a bar to the marriage of either of the parties to anyone except the other party. See BREACH.

Predecessor. When a person who is a corporation sole, such as a bishop or parson, dies, and the land held by him in his corporate capacity passes to his successor, the person so dying is called the predecessor, just as a natural person from whom land descends to his heir is called the ancestor. See SUCCESSOR.

As to the meaning of "predecessor" in the Succession Duty Act, 1853, see SUCCESSION.

Pre-emption. The right of pre-emption is the right of purchasing property before or in preference to other persons. Thus, under the Lands Clauses Consolidation Act, 1845, s. 128, where a company has, under its compulsory powers, purchased land which is not required for the purposes of its undertaking and is not situate in a town or used for building purposes, the company must first offer it for sale to the person owning the lands from which it was originally severed. This is commonly called the right of pre-emption.

Pre-emption was formerly part of the royal prerogative, and consisted in the right of buying up provisions and other necessaries for the use of the royal household, at an appraised value, in preference to all others, and without the consent of the owner. This right was surrendered by Charles II. at his restoration, and was abolished by the statute 12 Car. 2, c. 24.

In international law, pre-emption is the right of a Government to purchase, for its own use, the property of the subjects of another Power *in transitu*, instead of allowing it to reach its destination. Formerly the right appears to have been exercised in times of peace on any cargoes which entered the port of the purchasing State, but this practice has long fallen into disuse, and at the present day pre-emption is confined to time of war, and to cases where the goods are of such a description that their transport to the enemy of the pre-empting State would be manifestly to the disadvantage of the latter, while on the other hand the law of contraband does not justify their confiscation. The *Manual of Naval Prize Law* (1888), Art. 84, says:—"The carriage of goods conditionally contraband, and of such absolutely contraband goods as are in an unmanufactured state and are the produce of the country exporting them, is usually followed only by the pre-emption of such goods by the British Government, which then pays freight to the vessel carrying the goods." This right of pre-emption is to be distinguished from the DROIT D'ANGARIE (q.v.).

Preference; Preferential. See FRAUDULENT PREFERENCE. As to preferential debts, see DEBT.

Prefine. See PRÆFINE.

Pregnancy. See VENTRE INSPICIENDO, DE; JURY.

Prejudice means injury. An offer which is made "without prejudice" for the purpose of settling an existing dispute cannot be construed as an admission of liability, or given in evidence at all, except for a wholly collateral purpose, *e.g.*, to account for delay in asserting or prosecuting a claim. The offer need not be expressly made without prejudice: it will be deemed to have been so made if on its face it was made for the purpose of effecting a settlement. But the existence of a dispute is indispensable: thus a notice to creditors of intention to suspend payment issued "without prejudice" can be used as evidence in bankruptcy and a written promise, made "without prejudice," to pay a debt can be used to prevent the statute running in favour of the debtor.

Prelector. A public reader or lecturer. It was used as a translation of the title Reader (q.v.) in the Inns of Court. At Oxford it was formerly used as interchangeable with professor, except in the case of the Regius Professors. At Cambridge it meant either a college tutor or a lecturer on some subject. In the Cathedral Church of Hereford one of the prebendaries is elected prelector and has to preach on certain days; he vacates his prelectorship on becoming a canon resident.

Preliminary Accounts. Under Ord. 20 of the Consolidated Orders of the Court of Chancery the Court could direct preliminary accounts and enquiries at any time after the appearance of the defendant. The present Rules of Court as to ACCOUNTS AND ENQUIRIES (q.v.) do not specifically refer to preliminary accounts.

Preliminary Act. In actions for damage by collision between vessels, unless the Court otherwise orders, the solicitor for each party, before any pleading is delivered, must file a sealed-up document, called a Preliminary Act, which is not opened until ordered by the Court: it contains a statement as to the names of the vessels and their masters, the time and place of the collision, the state of the wind, weather and tide, the course, speed and lights of each vessel, and other particulars tending to show how the collision happened; and the Court may order the preliminary acts to be opened and the evidence to be taken thereon without any pleadings being delivered (R. S. C. Ord. 19, r. 28). The object of the rule requiring preliminary acts is to obtain a statement of the facts while they are still fresh in the recollection of the witnesses, and to prevent either party varying his version of facts, so as to meet the allegations of his opponent. The Court will never allow a party to contradict his own preliminary act at the hearing.

Premier. A colloquial equivalent for Prime Minister (q.v.). It is an abbreviated form of *premier minister*, and has been in use for about two hundred years.

Premises. In the primary sense of the word, "premises" signifies that which has been before "premised" or mentioned. Thus, after a recital of various facts in a deed, it frequently proceeds to recite that in consideration of the premises, meaning the facts recited, the parties have agreed to the transaction embodied in the deed. See AGREEMENT.

In a conveyance, when the property to be dealt with has been fully described, it is generally referred to in the subsequent parts of the deed, as "the premises hereinbefore described and intended to be hereby assured," or similar words. From this use of the word, "premises" has gradually acquired the popular sense of land or buildings. Originally, it was only used in this sense by laymen, and it is never so used in well-drawn instruments,

but it is frequently found in badly-drawn agreements and in Acts of Parliament.

In its technical sense, the "premises" is that part of a deed which precedes the *habendum*, and therefore includes—the introduction, and (in indentures) the date—the parties, or (in deed polls) the name of the grantor, etc.—the recitals—the consideration—and the grant, release or other operative part. See the various titles.

Premium. In granting a lease, part of the rent is sometimes capitalised and paid in a lump sum at the time the lease is granted. This is called a premium. A limited owner, such as a tenant for life, could not, before the Settled Land Acts, as a rule take a premium on granting a lease under a power, as the power generally forbids him to do so, but now he can take a fine or premium which, however, is to be treated as capital money (Settled Land Act, 1882, s. 6; Settled Land Act, 1884, s. 4).

As to premiums of insurance, see INSURANCE.

Premunire. See PRÆMUNIRE.

Prender. The power or right of taking a thing without its being offered. It was opposed to "render." Thus heriots were in "prender," it being the right of the lord to take them: rents were in "render," it being the duty of the tenant to pay them. See RENDER.

Prender de baron. Literally, to take a husband. (See BARON ET FEME.) Upon a woman making an appeal of felony (q.v.) against one who had murdered her husband, *prender de baron* was an exception (or objection) taken on the ground that she had re-married.

Prepensed. Prepensed malice (*malitia præcognita*) is the same as malice aforethought, that is to say, the malice necessary to constitute the offence of murder. The word is now obsolete.

Prerogativa regis. (Of the King's Prerogative.) An enactment printed under these titles in the *Statutes of the Realm* (vol. 1, p. 226), *s.v. Statutes of Uncertain Date;* printed in the *Statutes at Large* as 17 Edw. 2, st. 1, cc. 4-6, 7-16. Many of the chapters composing it are still unrepealed. Those of practical value are cc. xi., xii., under which the Crown is in effect made trustee of the lands of idiots and lunatics.

Prerogative means those exceptional powers, pre-eminences and privileges which the law gives to the Crown. They are either direct or by way of exception. Those by way of exception are such as exempt the Crown from some general rules binding on the rest of the community, as that lapse of time is no bar to a claim by the Crown, though this rule has been modified by statute. See NULLUM TEMPUS OCCURRIT REGI; REGALIA.

The direct prerogatives may be divided into three kinds: as they regard the royal character, the royal authority and the royal income. To the first class is generally referred the rule that the king can do no wrong: in other words, that he is not liable to be sued or punished for any act or default. (See PETITION OF RIGHT.) The second class includes the right of sending and receiving ambassadors, making treaties, declaring war and peace, assembling, proroguing and dissolving Parliament, raising and regulating fleets and armies (see MUTINY ACT), appointing ports and harbours (q.v.), appointing judges and magistrates, creating titles and offices, pardoning convicted criminals (see PARDON), and coining money. The third class, or fiscal prerogatives, are the sources of the royal revenue: these, however, though nominally belonging to the Crown, have for long past been surrendered to the public use, and now form part of the public income known as the Consolidated Fund (q.v.), out of which the Crown receives an annual sum, called the Civil List (q.v.), for the expenses of the royal household and establishment. The ancient fiscal prerogatives included the profits of the demesne lands of the Crown, the right to royal fish, wrecks, treasure-trove, waifs and estrays, escheats, etc. The rest of the public income consists chiefly of taxes, duties and other imposts voted by Parliament.

The Crown also has certain protective prerogatives, such as its prerogatives in connection with charities, idiots and lunatics, and the foreshore of lands adjoining the sea.

Prerogative Courts. Before the Probate Court (q.v.) was established there was an ecclesiastical Court held in each province, before a judge appointed by the archbishop, for granting probates and administrations in cases where the deceased left *bona notabilia* (q.v.) in different dioceses. It was called a Prerogative Court because the archbishop claimed the jurisdiction by way of special prerogative.

Prerogative Writs. See WRIT.

Prescribe. To prescribe is to claim a right by prescription. As to the meaning of the expression "to prescribe in a *que* estate," see PRESCRIPTION.

In modern Acts of Parliament relating to matters of an administrative nature, such as procedure, registration, etc., it is usual to

indicate in general terms the nature of the proceedings to be adopted, and to leave the details to be "prescribed" or regulated by rules or orders to be made for that purpose in pursuance of an authority contained in the Act. See ORDER; RULE.

Prescription is where a right, immunity or obligation exists by reason of lapse of time (*infra*). Thus, where a number of persons in succession have acted and been treated as a corporation from time immemorial without being able to show any express creation, they constitute a corporation by prescription. More commonly, however, prescription is applied to incorporeal hereditaments and rights or obligations connected with the user of land, to signify that they have been enjoyed as of right, and without interruption for a certain period. Thus, prescription is one of the principal modes by which easements, profits *à prendre*, franchises and other incorporeal hereditaments are created or evidenced. So, also, a privilege or exemption may be prescriptive, *e.g.*, a *modus decimandi*, a *de non decimando*, and an exemption from toll or stallage (q.v.). Prescription differs from custom in being personal: that is, when a person claims a right by prescription, he must allege that it has been enjoyed by him and his ancestors or predecessors in title. (See CUSTOM.) Prescription differs from limitation in being applicable only to incorporeal hereditaments and similar rights, and not to land or other corporeal hereditaments. Villenage was capable of existing by prescription; and it would appear (see *Co. Litt.* 195B) that two persons may be tenants in common of lands by title of prescription.

I. With reference to the length of time required, prescription is either at common law or by statute. At the common law, a title by prescription is where a right has been enjoyed from time immemorial, or time out of mind. By analogy to the old Statutes of Limitation, "time out of mind" was held to mean the first year of Richard I.'s reign; but when this period became inconveniently long, it was held to be sufficient if evidence of the enjoyment of the right was carried back as far as living memory would go. And when the Limitation Act, 1623, limited the time for bringing a possessory action to twenty years, the Courts held by analogy that if a right had been enjoyed for twenty years, it should be presumed to have been enjoyed from time immemorial: the presumption being based, according to some, on the fiction of a lost grant (see LOST GRANT), and, according to others, on the analogy between prescription and limitation. According to some of the older writers, however, the real common law prescription was when a right had been enjoyed "from," (see *Co. Litt.* 114A), "time whereof the memory of man runneth not to the contrary, that is as much as to say, when such a matter is pleaded, that no man then alive hath heard any proofe of the contrary, nor hath no knowledge to the contrary"; but subsequently the two expressions "time out of mind," and "time whereof the memory of man runneth not to the contrary," became synonymous. See MEMORY.

As to the statutory periods of prescription, see PRESCRIPTION ACT, 1832.

II. With reference to the manner in which a prescriptive right is claimed, prescription is of three kinds, namely:—(1) where the person claiming the right proves that it has been enjoyed by him and his ancestors during the time required by law; as in the case of an advowson or common in gross; (2) where the members of a corporation and their predecessors have enjoyed the right for the period required by law; and (3) where the person claiming the right proves that it has been enjoyed by him and his predecessors in title; or, as the old writers say, he must claim that the right is *en luy et en ceux que estate il ad*, that is, "in him and in those whose estate he hath": hence this is called prescribing in a *que* estate. A prescription in a *que* estate is simply a right annexed to and going along with certain lands, as where a man claims a right of advowson as appendant to a manor belonging to him. The rule of common law pleading used to be that a prescription in a *que* estate could only be claimed by a tenant in fee, and that if a tenant for a less estate wished to claim such a right, he was obliged to allege it as belonging to the tenant in fee. The most important practical result of this rule was that copyholders, being in theory mere tenants at will, were obliged to prescribe in the name of the lord of the manor, in whom the fee is vested; hence they were allowed to claim rights of common against the lord by custom instead of prescription. (See CUSTOM.) This rule was abolished by s. 5 of the Prescription Act, 1832: and now a tenant for any estate may prescribe in his own name.

In Roman law the *præscriptio* was a clause placed at the head of the pleadings (*præ*, before, and *scribere*, to write), in order to raise a kind of preliminary objection or reservation. One of the cases in which a defendant could make use of a *præscriptio* was where he wanted to raise the defence that the plaintiff's claim was barred by what corresponded to a

Statute of Limitations: hence the modern sense of the word.

See POSSESSION; INTERRUPTION; ENJOYMENT.

Prescription Act, 1832. This is the statute 2 & 3 Will. 4, c. 71, passed to limit the period of prescription in certain cases. In the case of rights of common and other profits *à prendre*, the period of enjoyment as of right required to establish the claim is thirty years, subject to an extension in case the person against whom it is claimed was under disability during part of that period; but in any case enjoyment for sixty years establishes an absolute and indefeasible right (s. 1). In the case of rights of way, watercourses and other affirmative easements, the terms are respectively twenty and forty years (s. 2); in the case of lights, enjoyment for twenty years gives an absolute and indefeasible right (s. 3). As to what is "enjoyment as of right," see ENJOYMENT; and as to the effect of interruption, see that title. The Act does not apply to any negative easements except that of lights.

Present; Presentation. Primarily, to present is to tender or offer. Thus, to present a bill of exchange for acceptance or payment is to exhibit it to the drawee or acceptor (or his authorised agent), with an express or implied demand for acceptance or payment. See BILL OF EXCHANGE; HONOUR.

In ecclesiastical law, presentation is where the patron or owner of an advowson offers a clerk in Holy orders to the bishop of the diocese to be instituted as parson or vicar of the living.

See ADVOWSON; INSTITUTION; NEXT PRESENTATION; SIMONY.

Present; Presentment. A presentment is a kind of report by a jury or other body of men. Thus, formerly, at every Customary Court of a manor, all events relating to the alienation of the copyhold lands of the manor were presented by the homage for the information of the lord. But by the Copyhold Act, 1841, s. 89, a presentment was made unnecessary for the alienation of copyholds.

Most commonly, however, presentment signifies one made by a jury acting in a judicial capacity; and, in its general sense, it includes inquisitions of office (q.v.), and indictments by a grand jury. But in the narrower sense of the word a presentment is the notice taken by a grand jury of any matter or offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the Crown; such as the presentment by them of a nuisance, a libel, or the like, upon which the officer of the Court must afterwards frame an indictment. This procedure is practically obsolete.

Presentation Office was the office of the Lord Chancellor's official, the Secretary of Presentations, who conducted all correspondence having reference to the twelve canonries and 650 livings in the gift of the Lord Chancellor, and drew and issued the *fiats* of appointment. The office was abolished by the Lord Chancellor's Pension Act, 1832, and the duties are now performed by the official in the Lord Chancellor's office who is known as the Secretary for Ecclesiastical Patronage and Secretary of the Permanent Secretary.

Presentee. The clerk presented to a benefice.

"Presents." The words "these presents," as used in a deed, mean "this deed." In an indenture the synonymous words, "this indenture," are more usual, but in a deed-poll (which cannot be described as "this indenture"), "these presents" is the only form permissible.

President of the Council. See LORD PRESIDENT.

Press, The. Upon the art of printing becoming general, the Press was subjected to a rigorous censorship, first on the part of the Church, and latterly on the part of the State. Thus, in the reign of Elizabeth, printing was interdicted, save in London, Oxford, and Cambridge. In the reign of James I. the first newspapers were printed, but that king and his successor endeavoured to silence them by means of the Star Chamber jurisdiction. In 1641, when the Star Chamber was abolished, newspapers promised to become more abundant, especially as the mind of the nation was at that time in a very active and even excited state; but the Long Parliament by various ordinances endeavoured to restrain printing, at least on the part of the Royalist and Prelatical party. This conduct on the part of the Long Parliament was the occasion of Milton's treatise, entitled "Areopagitica, A Speech for Liberty of Unlicensed Printing." Upon the Restoration, in 1660, the statute 13 & 14 Car. 2, c. 33, was passed, which placed printing under the control of the Government, and in particular confined the trade to London, York, Oxford, and Cambridge, limiting also the number of master printers to twenty; moreover, it imposed the severe punishments on offenders against the Act. This Act expired in 1695, after various periods of renewal, and was not again re-

enacted, it having been the opinion of Scroggs, C.J., and of the twelve other common law judges, that the common law was sufficient of itself, and without any statute, to repress the publication of any matter without the king's licence, and the liberal opinions which sprung up after the Revolution of 1688, preferring to entrust the control of the Press to the ordinary jurisdictions at common law.

From this date newspapers rapidly increased, and in the reign of Anne began to be published regularly, and some even daily; and in that reign they began for the first time to combine political discussion with matters of intelligence, and were subject only to the two following restraints:—

(1) The stamp duty on newspapers, which was imposed for the first time in 1712; and

(2) The law of libel.

These two restraints have been since gradually removed or relaxed: thus,—

(1) The tax upon newspapers, which was 4d. in the reign of Anne, was reduced to 1d. in 1836, and was repealed altogether in 1855, and ultimately, in 1861, the duty upon paper also was repealed.

(2) The law of libel was at first extremely severe, any reflection upon the Government, or upon ministers, being construed into a reflection upon the king himself, and therefore as a seditious libel. This state of the law of libel was rendered all the worse by reason of the then doctrine of the common law, that the jury could only find the particular fact of publication, and not a general verdict of libel or no libel, that matter being left to the judges, who (as being the servants of the Crown) were naturally suspected of being disposed towards the Crown. And although in the *Case of the Seven Bishops* (1687), the jury brought in a general verdict of no libel, yet that precedent was insufficient of itself to change the law, more especially as it was given in bad times. It was left to Mr. Erskine, in the *Case of the Dean of St. Asaph* (1778), to advocate the right of the jury in actions of libel to find a general verdict, and to Mr. Fox, in his Libel Act, 1792, to confer that right upon the jury. By the Libel Act, 1843, s. 6, a defendant, in a criminal information, was for the first time enabled to plead in defence or justification the truth of the matters published, and that the same were so published for the public good.

See APOLOGY; FOX'S LIBEL ACT; JUSTIFICATION; LIBERTY OF THE PRESS; NEWSPAPER; PRINTERS.

Pressing to Death. See PEINE FORTE ET DURE.

Prest. This was anciently used as meaning (1) a forced loan levied by the king; (2) an impost, and more especially a deduction from any payment; (3) the money paid to a soldier on enlistment. Absconding after receiving prest-money, in its last-mentioned sense, was felony without benefit of clergy under the statute 7 Hen. 7, c. 1.

Prestation Money. Money payable by an archdeacon to his bishop for being allowed to exercise a jurisdiction which originally appertained to the bishop.

Prestimony. A fund for the maintenance of a priest, which did not constitute a benefice. No such thing would appear to be known to the present ecclesiastical law.

Presumption. In the law of evidence, a presumption is a conclusion or inference as to the truth of some fact in question, drawn from some other fact judicially noticed, or proved or admitted to be true.

Presumptions are of three kinds. Irrebuttable or conclusive presumptions (*præsumptiones juris et de jure*) are absolute inferences established by law: they are called irrebuttable because evidence is not admissible to contradict them. Thus an infant under the age of seven years is presumed to be incapable of committing a felony, and the presumption cannot be rebutted by the clearest evidence of a felonious intention. Irrebuttable presumptions are more properly called rules of law or fictions of law, according as the fact presumed is probably true, or is known to be false. See AGE; FICTION.

Inconclusive or rebuttable presumptions of law (*præsumptiones juris tantum*) are inferences which the law requires to be drawn from given facts, and which are conclusive until disproved by evidence to the contrary; thus an infant between seven and fourteen is presumed to be incapable of committing a felony, but evidence may be given to prove a felonious intention.

Presumptions of fact (*præsumptiones hominis vel facti*) are inferences which the tribunal (*e.g.*, a jury) is at liberty, but not compelled, to draw from the facts before it: if the tribunal thinks that the facts do not support the inference suggested, the presumption fails from its own weakness. This class is divisible into strong presumptions, or those which shift the burden of proof, and slight presumptions, which do not. Thus, possession is a strong presumption or *primâ facie* evidence of property (see POSSESSION), while the

presumption of guilt arising from the fact of a person having a pecuniary interest in the death of a murdered person is too slight to put him on his defence. Mixed presumptions, or presumptions of facts recognised by law, or presumptions of mixed law and fact, are certain presumptive inferences, which from their strength, importance, or frequent occurrence, attract as it were the observation of the law. The presumption of a "lost grant" (q.v.) falls within this class.

As to presumptive evidence, see EVIDENCE.

Presumption of Life or Death. See ABSENCE FOR SEVEN YEARS; COMMORIENTES; LIFE.

Presumptive Title. See POSSESSION.

Pretenced Right or Title. Where one is in possession of land and another claims and sues for it, there is said to be a "pretenced title" in the latter person. The sale of any "pretenced title" was void at common law and was expressly prohibited by s. 2 of the statute 32 Hen. 8, c. 9, commonly known as the Bill of Bracery and Buying of Titles. The Real Property Act, 1845, s. 6, makes a "pretenced title" transferable by deed; but the Act of 1845 did not repeal the enactment of Henry VIII., which, however, was eventually expressly repealed by s. 11 of the Land Transfer Act, 1897.

Preventive Detention. See HABITUAL CRIMINAL.

Preventive Service. See COASTGUARD.

Previous Conviction. Under the Criminal Law Act, 1827, s. 11, the Larceny Act, 1916, s. 37, persons convicted of certain offences, after a previous conviction for certain other offences, are liable to severer sentences than they would otherwise be: and under many other statutes an increased penalty may be inflicted for an offence other than the first. Where a person is convicted of felony or of certain misdemeanours, and a previous conviction for a like offence is proved against him, he may in addition to the ordinary punishment for the offence, be subjected to police supervision (q.v.) under the Prevention of Crimes Act, 1871.

The general rule is that previous convictions may not be proved against a prisoner unless evidence of his good character is given (Previous Conviction Act, 1836); but where the prisoner is charged with receiving or possessing stolen goods, then evidence may be given of his conviction within the preceding five years of any offence involving fraud or dishonesty (Prevention of Crimes Act, 1871, s. 19).

A prisoner giving evidence on his own behalf may not be questioned as to whether he has committed or been convicted of any offence other than that charged unless evidence of a previous conviction is admissible to show whether he is or is not guilty of the offence charged, or unless in the course of the case he has sought to prove his own good character or the bad character of the prosecutor or the prosecutor's witnesses, or unless he has given evidence against anyone charged with the same offence (Criminal Evidence Act, 1898, s. 1.(*f*)).

Pricking for Sheriffs. When the yearly list of persons nominated for the office of sheriff in each county or county of a city is submitted to the King in Council, he takes a silver bodkin, and, to ensure impartiality, lets the point of it fall upon one of the three names nominated for each county, etc.; and the person upon whose name it chances to fall is sheriff for the ensuing year. This is called pricking for sheriffs. In practice, persons whose names are pricked have been decided on beforehand, and there is really no element of chance in the matter.

Pricking does not apply to Cornwall (the sheriff of which is appointed by the Prince of Wales, as Duke of Cornwall), or to Lancashire (the sheriff of which is appointed by the King as Duke of Lancaster).

Pride; Pride-gavel. The pride was the lamprey: and pride-gavel was a rent paid until recently by the tenants of the Manor of Rodeley, in Gloucestershire, for the privilege of fishing for lampreys in the Severn.

Priest. One in priest's orders of the Church of England or of the Roman Catholic Church, or, it would seem, of the Greek Church. In the Church of England deacon's orders are a necessary preliminary to priest's orders. No one can be admitted to the latter, in the absence of a faculty, unless he be twenty-four years of age (Clergy Ordination Act, 1804). No one, other than a priest—every bishop is of necessity a priest—can consecrate the Holy Communion or pronounce the Absolution.

See DEACON; HOLY ORDERS.

Primæ Impressionis. (Of first impression.) See FIRST IMPRESSION.

Primage. This is a small payment (also known as hat-money) made by the owner or consignee of goods to the master of the vessel in which they are shipped for his care and trouble, and varies in amount according to the particular trade in which the ship is engaged. The payment of this sum is generally

stipulated for in the bill of lading (q.v.). See AVERAGE.

Primary. See CONVEYANCE; EVIDENCE.

Primate is an archbishop. The Archbishop of Canterbury is styled Primate of all England: the Archbishop of York is Primate of England simply. Primacy is the office or authority of a primate.

Prime Election. First choice.

Prime Minister. In point of law, as distinguished from constitutional law, there is no such office as that of Prime Minister. He is simply the particular member of one House of Parliament or the other to whom the Sovereign deputes the function of selecting other members of those Houses as the persons to form the Cabinet. The Prime Minister, as such, receives no salary, but he holds one or other of the great political offices—usually the office of First Lord of the Treasury, to which a salary of £5,000 a year is attached. Although the Prime Minister, as such, has no legal status (except under the Chequers Estate Act, 1917), he is the head of the Government for the time being. Other members of the Cabinet hold office only at his pleasure: he remains the predominant member of the Cabinet so long as he commands a majority in the House of Commons, and he, for that reason, is always the leader of the political party which, for the time being, is the strongest.

By Royal Warrant, 2nd December, 1905, the Prime Minister takes precedence next after the Archbishop of Canterbury (who ranks next after the Princes of the Blood Royal), the Lord Chancellor and the Archbishop of York.

In the Chequers Estate Act, 1917, the Prime Minister is referred to (Sch. (VI)) *eo nomine*: but this is a statutory recognition merely of the fact that a particular person bears a particular label for the time being.

Primer. First—now used only in the archaic compound expressions given below.

Primer Fine. See PRÆFINE.

Primer seisin was a payment due by a tenant of land held of the Crown *in capite ut de coronâ* if he succeeded to it by descent when of full age. The payment consisted of one year's profits of the land if it was in possession, and half a year's profits if it was in reversion. Primer seisin was abolished by the statute 12 Car. 2, c. 24. See IN CAPITE; LIVERY; OUSTERLEMAIN.

Primitiæ. See ANNATES.

Primo beneficio. A writ which, upon occasions, was formerly addressed to the Chancellor or the Keeper directing him to bestow upon such and such a clerk the first benefice in the royal gift, and over a certain value, which became vacant. See BENEFICIO, ETC.

Primo excutienda est verbi vis, ne sermonis vitio obstruetur oratio, sive lex sine argumentis (*Co. Litt.* 68). (The meaning of the word must be first examined in order that the meaning of the sentence may not be obscured by a verbal error, and that the law may not be left obscure for want of its being argued.) "The golden rule of construction is that words are to be construed according to their natural meaning, unless such a construction would either render them senseless or would be opposed to the general scope and intent of the instrument, or unless there be some very cogent reason of convenience in favour of a different interpretation"—*per* Bramwell, B, (3 H. & C. 461).

Primogeniture. This (from *primo-genitus*, first-born) is the rule of inheritance according to which the eldest of two or more males in the same degree succeeds to the ancestor's land to the exclusion of the others. It was a matter of far greater consequence in ancient times, before alienation by will was permitted, than it is at present, and from it arose the English custom of settling the family estates on the eldest son. See DESCENT; ESTATE TAIL; SETTLEMENT.

Prince Consort. This title was bestowed by patent in 1857 upon Prince Albert of Saxe-Coburg, the husband of Queen Victoria. Until then he had been merely "Prince Albert" with, however, a patent of precedence next after the Queen. The title of Prince Consort was merely honorific, and made no substantial difference in the position of the Prince.

Prince of Wales. The eldest son of the reigning Sovereign is always created Prince of Wales and Earl of Chester by patent. George III., when he became heir apparent to George II. upon the death of Frederic, Prince of Wales, was also created Prince of Wales and Earl of Chester; but (see CORNWALL) he was never Duke of Cornwall. Since the accession of James I., the heir apparent has been by inheritance Duke of Rothesay, Earl of Carrick, and Baron of Renfrew in the peerage of Scotland, and Lord of the Isles and Great Steward of Scotland, these titles being inherited under an Act of the Scottish Parliament, passed 27th November, 1469. See CIVIL LIST; CORNWALL; HEIR APPARENT.

"Princes, Rulers and Peoples." "Arrests, restraints, and detainments of princes, rulers, and peoples," are almost always provided

against in contracts of affreightment and policies of marine insurance. The expression virtually means "interference of a lawful authority."

Princess Royal. The title borne by the eldest daughter of the Sovereign, if and when it is conferred on her by the Sovereign. Thus the *London Gazette* of 9th November, 1905, announced that Edward VII. had "been pleased to declare" that his eldest daughter should bear "the style and title of Princess Royal." No grant by letters patent is necessary. The question as to what happens when the title is borne by the eldest daughter of a deceased Sovereign and there is an eldest daughter of a subsequent Sovereign has never arisen until now. The title had not up to the end of 1921 been conferred on the eldest daughter of his present Majesty. It would seem that the title cannot well be held simultaneously by two ladies.

Principal. A person who authorises another to act on his behalf is called the principal, and the person so authorised is called the agent. The law of principal and agent deals both with the rights and duties of the principal and agent *inter se*, and with those of each of them toward third persons. See AGENT; AUTHORITY; POWER OF ATTORNEY.

When an authorised agent does an act in his own name and professedly on his own behalf, though really on behalf of his principal, the latter is said to be undisclosed: the general rule is that an agent contracting for an undisclosed principal is himself liable to the person contracting with him, and that the latter also has the option of suing the principal as soon as he discovers his existence, unless in the meantime the principal has *bonâ fide* paid the agent, in which case the principal is discharged from liability.

A person who owes a debt for which another person is liable in case of his default in paying it, is called the principal or principal debtor, the other being his surety (q.v.) See GUARANTIE; INDEMNITY.

As regards "principals" in the criminal law see DEGREE.

Principal Mansion-house. The Settled Land Act, 1890, s. 10 (2), enacts that the principal mansion-house, and the pleasure grounds and parks usually occupied therewith, cannot be sold, exchanged, or leased without the consent of the trustees of the settlement or an order of the Court; but s. 10 (3) declares that no house usually occupied as a farmhouse, or occupying with its park and grounds less than twenty-five acres, is within the section.

Where there are more mansion-houses than one upon the same estate the question as to which is the principal mansion-house depends upon the facts. Where there is only one mansion-house on settled land it is a "principal mansion-house" unless it be such house as is specified in s. 10 (3) of the Act of 1890.

Principiorum non est ratio (2 *Buls.* 239). (First principles do not require proof.) Compare NON OMNIUM, ETC.

Printers. The Newspapers, Printers, and Reading Rooms Repeal Act, 1869, repeals a number of earlier Acts dealing with the subjects indicated by the title of the Act of 1869, except as regards certain parts (set out *in extenso* in the Second Schedule to the Act of 1869) of those earlier Acts. These unrepealed parts of the earlier Acts provide (1) that a printer shall incur a penalty of £20, recoverable summarily, in respect of anything (other than parliamentary papers, bank notes, bills of exchange and various documents used in the course of law or business, or papers for public departments) which he prints for hire, unless he keeps a copy bearing the name and address of his employer; (2) that he shall incur a penalty of not more than £5, recoverable summarily, for every copy of anything intended for publication which does not bear his name and address, unless it be, and is declared to be, printed at the *University Press, Oxford*, or the *Pitt Press, Cambridge*; and (3) that no such penalty can be sued for except in the name of a law officer (q.v.).

Priores leges ad posteriores trahantur (*D* 1, 3, 26). This literally is: "Earlier laws are drawn to those of later date." It practically means the same as *Lex posterior* (q.v.).

Priority. When two persons have similar rights in respect of the same subject-matter, but one is entitled to exercise his right to the exclusion of the other, he is said to have priority. The question is chiefly of importance with reference to securities on property; thus, if A mortgages his land first to B by a deposit of title-deeds, then to C by a formal deed of mortgage, and then to D by an agreement of charge, the question arises who is entitled to realise his security in priority to the others. The general rule is that he who has the first mortgage and has the legal estate has priority over all other incumbrancers, and that where there is a prior equitable mortgage, a subsequent incumbrancer who obtains the legal estate without notice of the equitable mortgage, is entitled to priority over it. In the case supposed, therefore, C would have priority over B unless he had notice of B's

charge, or was guilty of gross negligence, *e.g.*, in omitting to inquire as to the deeds.

Priority is of various kinds according as it arises by the doctrines of tacking (q.v.), of consolidation (q.v.), or of salvage (q.v.),—by simple priority in point of time or date,—or by a statutory provision (statutory priority), as under the various registration Acts, which usually make instruments take effect in the order of date in which they are registered. Important questions as to priority also arise in administering estates and assets, where the contending claims of creditors, legatees, etc., have to be considered. See ASSETS; LEGACY.

In the old law of tenure, priority was antiquity of tenure in comparison with another tenure less ancient. See POSTERIORITY.

Prior petens ("the person first applying"). In probate practice, where there are several persons equally entitled to a grant of administration (*e.g.*, next-of-kin of the same degree), the Court sometimes makes the grant *priori petenti*, to the first applicant (or *prior petens*); but there is no fixed rule to that effect.

Prior tempore potior jure. See QUI PRIOR, ETC.

Prisage was an ancient hereditary revenue of the Crown, consisting in the right to take a certain quantity from cargoes of wine imported into England. In Edward I.'s reign it was converted into a pecuniary duty called butlerage. All prisage and butlerage on wines were abolished as regards England, except the Duchy of Lancaster, by the statute 49 Geo. 3, c. 98, ss. 35, 36, and, as regards the Duchy, by the statute 2 & 3 Will. 4, c. 84, s. 40. The present duties on wines are regulated by the Customs Acts. (See CIVIL LIST; CONSOLIDATED FUND; CUSTOMS.)

Prisage is also stated in Cowell (1607), and in all subsequent law dictionaries, to have been the share of the King or the Lord High Admiral in ships lawfully taken in prize: but this seems to be entirely without foundation.

Priso. Used by Roger de Hovenden in the twelfth century as meaning a prisoner taken in war.

Prisonam frangentibus, Statutum de. This is the statute 23 Edw. 1. It is taken as the foundation of the doctrine that prison-breach was felony in the case of one confined on a charge of felony, and misdemeanour in the case of one confined on a charge of any lesser offence.

Prison-breach, or prison-breaking, is where a person, being lawfully detained on a charge of or under sentence for an offence, breaks out of the place where he is detained, that is, escapes with force. The degree of the offence and its punishment varies at common law with that of the offence for which he was detained.

See ESCAPE.

Prisons are places in which persons are kept either for safe custody until they have been tried for an offence of which they stand charged, or for punishment after being tried and convicted. The general administration of prisons is vested in the Home Secretary, assisted by prison commissioners appointed by the Crown, and each prison is further under the more immediate jurisdiction of a visiting committee of the justices of the peace or magistrates in the district. (See IMPRISONMENT; HABEAS CORPUS; PENAL SERVITUDE).

Private. See ACT OF PARLIAMENT; BILL; CHAPEL; LAW.

Privateers were ships commissioned by letters of marque (q.v.) to exercise general reprisals (see REPRISALS). Privateering, properly so called, was abolished as between European nations by the Declaration of Paris in 1856. But very much the same thing still exists. During the Franco-Prussian War the Prussian Government incorporated all its merchant ships into its navy, and used them for ordinary naval operations: during the Russo-Japanese War the Russian Government used armed merchantment as cruisers; and we did the same during the Great War. There is, however, a clear distinction between the new *quasi*-privateer and the old privateer. In the old privateering, the privateer was for all purposes a private ship except that her master had letters of marque (q.v.): now when a private ship is used for warlike purposes she is under naval discipline, and is precisely the same as a regular warship, except that she was not originally built as one.

Privation. An obsolete abbreviated form of DEPRIVATION (q.v.).

Privatis pactionibus non dubium est non-lædi jus cæterorum (*D.* 2, 15, 3). (It is clear that the rights of others are not prejudiced by private agreements.)

Compare DEBITORUM, ETC.; PACTA PRIVATA, ETC.

Privatorum conventio juri publico non derogat (9 *Rep.* 141). (An agreement between private persons does not derogate from the public right.) Compare PACTA PRIVATA, ETC.

Privatum commodum publico cedit (*Jenk. Cent.* 223). (Private good yields to public good.) Compare SALUS POPULI, ETC.

Privatum incommodum publico bono pen-

satur (*Jenk. Cent.* 85). (Private loss is compensated by public good.)

Privement ensient. Used in the old law-French as meaning pregnant but not yet quick with child.

Privilege. A privilege is an exceptional or extraordinary right, immunity or exemption. It may exist in respect of a person, or in respect of a thing.

I. With reference to the persons who enjoy them, personal privileges are of various kinds: the principal are those belonging to the Royal Family, the Houses of Parliament, peers, ambassadors, barristers, solicitors and clergymen. With reference to the nature of the right or exemption, the principal privileges are —the freedom from arrest enjoyed by ambassadors (q.v.) and peers; the exemption from serving on juries enjoyed by peers, members of Parliament, ministers, barristers, solicitors, medical practitioners, etc.; the privileges exempting solicitors and barristers from giving discovery or evidence of matters communicated to them by their clients in professional confidence, etc. (see CONFIDENTIAL COMMUNICATIONS). With reference to their duration, privileges are either permanent or temporary: thus, a member of Parliament is privileged from arrest on civil process during the sitting of the House, and for forty days before and after a prorogation: a barrister has a similar privilege while he is on circuit, and a peer always possesses a similar privilege.

A statement is said to be privileged when it is made in such circumstances that it does not render the person making it liable to proceedings for slander or libel, although it would have that effect in the absence of those circumstances. The principal instances of privileged statements are those made between a solicitor or counsel and the client; by a witness in the course of his examination, or a counsel in his speech; those made where it is the duty of the person making it to do so, *e.g.*, where a master is giving the character of a servant, or where the matter is of public interest; this last is sometimes called privilege by reason of the occasion: thus, statements made in the course of legal proceedings and parliamentary debates are privileged, as are also fair reports or comments on such proceedings, and fair criticisms on literary publications and works of art. The privilege is said to be absolute where the intention of the speaker or writer is immaterial (as in the case of judges, members of Parliament, etc.), or qualified, when it does not excuse malice in fact, as in the case of statements made by persons in the discharge of some public or private duty, or in the conduct of his own affairs. See MALICE.

II. Privileges in respect of things. Some chattels are privileged from distress (q.v.), and some from being taken in execution (q.v., and see GOODS). A document is privileged from production when its production cannot be compelled under the ordinary order for production in an action (see PRODUCTION): the principal instances of privileged documents are documents of title and confidential communications (q.v.).

As regards the former Court of Common Pleas, privilege meant the right of all belonging to that Court, whether attorneys or their clerks, to sue or be sued only therein. See CLERK OF THE PLEAS.

Privileged Copyholds. Customary freeholds (q.v.).

Privileged Debts. The same as preferential debts. See DEBT.

Privileged Places. These were places—all in or near the City of London—in which a pretended right of sanctuary (q.v.) existed. They were Whitefriars, the Savoy, Salisbury Court, Ram Alley, Mitre Court, Fuller's Rents, Mintage Close, the Minories, the Mint, and Clink or Deadman's Place. This pretended right was taken away by the statute 8 & 9 Will. 3, c. 26, which provided for the execution of process within these places and for the punishment of anyone resisting. A subsequent statute dealt further with the Mint (q.v.).

Privileges, Committee of. This is a standing committee of the whole House of Lords, which is presided over by the Chairman of Committees and is reappointed at the beginning of each session. It is concerned with the privileges of peers generally, and more especially with claims to peerages. The first mention of such a committee is in 1620. The Court of Chivalry (q.v.) had adjudicated on such matters down to 1521, when (see Earl Marshal) it become doubtful whether the Court could be properly constituted: and for the next hundred years claims went sometimes before Commissioners appointed by the Crown, sometimes to the judges and sometimes to the House of Lords, which thereupon became in fact, if not in name, the modern committee of privileges in each particular case.

Privilegium clericale. Benefit of clergy (q.v.).

Privilegium non valet contra rempublicam (*Bac. Max.* 5). (A privilege avails not against the State.) For this reason the husband's coercion does not excuse the wife if she join

him in committing treason. Compare NECESSITAS INDUCIT, ETC.

Privity; Privy.—I. Originally "privy" signified a friend or acquaintance, as opposed to a stranger; and hence privity means knowledge: thus, the rule is that "when any deed is altered in a point material by the plaintiff himself, or by any stranger without the privity of the obligee . . . the deed thereby becomes void." (11 *Rep.* 27.) See ALTERATION.

II. In its secondary sense, privity denotes a peculiar relation in which a person stands, either to a transaction or to some other person. The persons standing in such a relation are called privies. Thus, in the law of fines, the heirs and successors of the parties to a fine were said to be privies to it, and were bound by it as if they had been parties, as opposed to strangers, that is, persons who were neither parties nor privies. (See FINE.) The principal kinds of privity of practical interest are as follows:—

Privity of contract is the relation which exists between the immediate parties to a contract, as where A agrees with B to pay him £100. Privity of contract is necessary to enable one person to sue another on a contract. Thus, if A agrees with B that he will pay C £100, C, for want of privity between them, cannot bring an action against A on the contract.

Privity of estate is that which exists between lessor and lessee, tenant for life and remainderman or reversioner, etc., and their respective assignees, and between joint-tenants and coparceners. Privity of estate is required for a release by enlargement. Thus, if A grants land to B for life, and B grants a lease to C, and then A executes a release to C, this is void as a release, because there is no privity between A and C. But the assignee of a lease liable to the rent and covenants contained in it, although there is no privity of contract between him and the lessor.

Privity of blood exists between an heir and his ancestor (privity in blood inheritable), and between coparceners. This privity was formerly of importance in the law of descent cast (q.v.).

Privity in representation exists between a testator and his executors; and privity in succession exists between a predecessor and a successor, in the case of a corporation sole. Either kind is also called privity in right.

Privity in tenure is that which exists between a lord and a tenant who holds of him by a service. See TENURE.

In the old books, privity of person is said to exist (i) between trustee and *cestui que trust*; (ii) between husband and wife; (iii) between coparceners.

Privity of possession exists between joint-tenants, tenants in common and coparceners. The last, therefore, have a three-fold privity, and the first a two-fold privity (*supra*).

Privity in deed is a privity created by the act or consent of the party, as opposed to privity in law, which is one created by the law.

Privy Council is, in theory, the principal council of the Crown, and consists of such persons as are nominated by the Crown to the office. Nominally the Council is supposed to advise the Crown on affairs of State, but practically that duty is fulfilled by a select body called the Cabinet, who are members of either House of Parliament and hold the principal offices of State. The only members of the Privy Council (other than the Cabinet) who perform active duties are those constituting the Judicial Committee (q.v.). The Board of Trade (q.v.) is composed of Privy Councillors: but it never meets. In the case of a large number of Privy Councillors the office is, therefore, purely nominal: it confers the title of "Right Honourable." In 1916 it was decided that a person born abroad of alien parents, but who is subsequently naturalized, is capable of being a Privy Councillor: see [1916] 2 *K. B.* 858, *C. A.*

See FORMA JURAMENTI; LORD PRESIDENT OF THE COUNCIL.

Privy Purse. The only part of the Civil List (q.v.) which the Sovereign can spend as he pleases.

Privy Seal. This was a seal—intermediate between the Signet (q.v.) and the Great Seal—employed by the Crown, chiefly as an authority to the Lord Chancellor to affix the Great Seal to certain documents, *e.g.*, letters patent. The Privy Seal was affixed either to the bill or draft of the letters patent (see BILL), or to a warrant which set them forth and directed the Lord Chancellor to have them passed under the Great Seal (q.v.). It was abolished in 1884. See CLERKS OF THE PRIVY SEAL; LORD PRIVY SEAL.

Privy Signet. See SIGNET; SEAL.

Prize Bounty. Under the Naval Prize Act, 1864, s. 42, the King may by Order in Council grant prize bounty for distribution amongst the officers and men of His Majesty's ships which are present at the capture or destruction of any armed enemy ship, such bounty to be at the rate of £5 for each of the crew of such enemy ship. At the Battle of Jut-

land on June 1st, 1916, eleven German ships with crews numbering in the aggregate 4,537, were destroyed: and it was held (see [1920] *P.* 408) that the sum of £22,685 was divisible amongst the 151 vessels which formed the British Fleet.

Prize bounty is a purely naval award and is, therefore, not payable in respect of any capture or destruction effectuated otherwise than by the naval forces of the Crown and by them alone.

Prize Fight. If two men fight with ungloved fists until one of them can fight no more, each of them is certainly guilty of assault: so also, it would seem, are those promoting or assisting at the fight; and they all are guilty of unlawful assembly. The same is the case if gloves are worn but the contest is decided not upon the skill of the competitors but by one or the other being rendered incapable of fighting any longer.

Prize Money. The same as Prize Bounty (q.v.).

Prize; Prize Courts. "Prize" is property captured from an enemy at sea. (See CAPTURE.) Prize Courts are Courts specially constituted for the purpose of deciding questions of maritime capture in time of war according to international law. In this country, the jurisdiction in such questions formerly belonged to the Court of Admiralty sitting as a Prize Court under the Naval Prize Act, 1864, and is now vested in the High Court of Justice by s. 16 of the Judicature Act, 1873, and s. 4 of the Judicature Act, 1891. Procedure in prize is governed by the Prize Court Rules, 1914 (S. R. & O., 1914, Vol. III., p. 105), which came into operation on 5th August, 1914. From that date the sections of the Act of 1864 dealing with the practice and procedure of Prize Courts were repealed by the Prize Courts (Procedure) Act, 1914, which excepted from the jurisdiction of Prize Courts ships of war taken as prize.

See MONITION.

The constitution of Prize Courts in the British dominions overseas is dealt with in the Prize Courts Act, 1894.

Prize Salvage. Under the Naval Prize Act, 1864, s. 40, where a ship or cargo belonging to a British subject, after being taken as prize by an enemy, is recaptured by a King's ship and restored to the owners, the crew of the King's ship are entitled to salvage at the rate of not less than one-eighth or more than one-fourth of what they have re-captured: this is termed marine salvage. Under the law of nations, a King's ship is entitled to receive analogous payments in respect of the re-capture of a neutral ship, captured by the enemy, which, but for the re-capture, would have been confiscated or destroyed: see [1916] *P.* 100.

Probandi necessitas incumbit illi qui agit (*I.* 2, 20, 4). (The necessity of proving lies upon him who commences proceedings.) Compare EI QUI, ETC.

Probate. This is a certificate granted by the Probate Division of the High Court of Justice to the effect that the will of a certain person has been proved and registered in the Court and that administration of his effects has been granted to the executor proving the will, he having first sworn faithfully to administer them and to exhibit a true inventory and render a just account when called on. This certificate was formerly on a piece of parchment annexed to a copy of the will and codicils or other testamentary papers, if any, engrossed on parchment: but since 1st January, 1901, paper of a special kind and size has been substituted for the parchment. The whole is commonly referred to as the probate, but inaccurately, the certificate being the probate, and the copy of the will being the "probate copy."

When a grant of probate has been made, the Clerk of the Seat (q.v.) makes an entry or memorandum of the fact; this (or a copy of it) is called the probate act.

Probate may be granted either in solemn form or in common form. Probate in solemn form is only employed when there is or is likely to be a dispute as to the validity of the will, and in such a case the person who wishes its validity to be established commences an action against the person who disputes it. The action proceeds as to pleadings, trial, etc., in the same way as an ordinary action; if the plaintiff makes out his case, the Court pronounces for the validity of the will and the executor may then take probate of it as if it had not been disputed. As a general rule, probate in solemn form is conclusive on all who are parties to the proceedings or cognizant of them. See ESTABLISHMENT OF WILLS.

Probate in common form is, in the words of Lord Stowell, that "form which is slight and summary for ordinary and undisputed cases." It is granted in ordinary cases as a matter of course on the executor swearing and filing (1) an affidavit called the oath of executor or oath of office, by which he swears that the will annexed to the affidavit is "the true and original last will and testament" of the testator, and that he will faithfully administer

the estate; and (2) an affidavit for Inland Revenue.

Where several persons are named as executors it is not necessary for all to prove together; one may prove, power being reserved to the others to prove subsequently. If they do, another probate, called a double probate, must issue.

As to limited grants of probate, see GRANT.

" Probate business " is used as a general term to include all business relating to the granting and revoking of probates and letters of administration both in contested and uncontested cases. The non-contentious business is transacted in the registries (see REGISTRY) of the Probate, Divorce and Admiralty Division of the High Court (q.v.): the contentious business is, as a rule, transacted in the same Division, or, where the personal estate does not exceed £200 and the real estate does not exceed £300 in value, in the County Court (q.v.) of the district, where the deceased had his fixed place of abode.

Probate, Divorce and Admiralty Division is that Division of the High Court of Justice which exercises jurisdiction in matters formerly within the exclusive cognisance of the Court of Probate, the Court for Divorce and Matrimonial Causes, and the High Court of Admiralty (see those titles). It consists of two judges, one of whom is called the President, and a number of registrars (q.v.). In certain cases the judges of assize now have jurisdiction (see DIVORCE COURT).

The jurisdiction in probate matters is of two kinds, contentious and non-contentious. The non-contentious business comprises all " common form business," that is, " the business of obtaining probate and administration (q.v.) where there is no contention as to the right thereto, including the passing of probates and administrations in contentious cases when the contest is terminated, and also the business of lodging caveats " (Court of Probate Act, 1857, s. 2). (See CAVEAT; WARNING.) And contentious business comprises all other proceedings (Rule 3 (Contentious Business)).

The jurisdiction in divorce and matrimonial matters is exercised in pronouncing decrees of nullity or dissolution of marriage, judicial separation, restitution of conjugal rights and jactitation of marriage (q.v.), and in dealing with subsidiary matters arising in suits for the above purposes (see ALIMONY; SETTLEMENT). Appeals from any decision in these matters lies to the Court of Appeal (Judicature Act, 1881, s. 9). Under s. 120 of the County Courts Act, 1888, an appeal lies from the decision of a County Court in a probate action to (see Ord. 59, r. 4) the Divisional Court of the Division.

The jurisdiction in Admiralty matters is exercised in questions as to the possession, mortgage, damage, salvage and towage of ships and claims in respect of necessaries and wages.

Probate Duty. This is a stamp duty payable (except where it is merged in estate duty) with certain unimportant exceptions, on all the personal property over the value of £100 in this country of anyone in respect of whom a grant of probate or letters of administration should be obtained. Such personal property includes property appointed by will under a general power (Probate Duty Act, 1860, s. 4). It is not payable in respect of deaths since 1st August, 1894, upon any estate for which estate duty is payable (Finance Act, 1894, s. 1, Sch. I. (1)); but it is still payable upon the personal estates in this country of persons domiciled abroad, inasmuch as no estate duty is payable thereon, and it therefore is not entirely superseded by estate duty. Like estate duty, it is payable on the total value of the property which is subject to it: but, unlike estate duty, it applies only to personalty.

Probate duty was first introduced in 1694. From 1815 to 1894 it was payable under the Stamp Act, 1815, the Customs and Inland Revenue Act, 1880, and the Customs and Inland Revenue Act, 1881: and now, when payable, it is paid under the Act of 1881.

The rate of probate duty varies with the value of the property subject to the duty. In no case is the duty less than 1 per cent. or more than 3 per cent (see Customs and Inland Revenue Act, 1881, s. 27).

Before 1881, probate duty was paid by a stamp on the grant and was calculated on the whole value of the personal estate without deducting debts (other than debts on leaseholds), although after the debts had been paid repayment of a proportionate part of the duty could be obtained. The Act of 1881 made an important alteration in the pre-existing law—(i) by allowing debts (other than voluntary debts) and funeral expenses to be deducted from the value of the estate before payment of the duty (s. 28); and (ii) in making the duty payable on the affidavit for Inland Revenue instead of on the grant (s. 27). A certificate is written on the grant to show that the duty has been paid (s. 30). The affidavit for Inland Revenue verifies an account of the estate, a schedule of debts and funeral expenses, and states the net amount of the estate (s. 29).

Probation of Offenders. Under the Probation of Offenders Act, 1907, s. 1, where a person is charged before a magistrate with a summary offence which is proved, or where a person is convicted on indictment, the magistrate may, instead of convicting, dismiss the charge or discharge the offender on recognisances (with or without sureties) for good behaviour and to come up for judgment within three years, and the Court before which the prisoner is convicted on indictment may discharge him on the like recognisances: but one of these courses is permissible only where it is considered desirable, in view of the character, antecedents, age, health, or mental condition of the accused, or the trivial nature of the offence, or extenuating circumstances: the Court may also order payment by the accused of the compensation to the extent of £10, or any higher amount fixed by statute, and the costs of the proceedings. The recognisance may contain various conditions aimed at securing the good conduct of the offender (s. 2). There may be appointed probation officers, for adult offenders, and also "children's probation officers" (s. 3), who keep in touch with offenders on probation (s. 4). Where an offender fails to observe the conditions of his recognisance he may be brought up and sentenced for the original offence. The Criminal Justice Administration Act, 1914, s. 8, materially amends s. 2 of the Act of 1907.

See FIRST OFFENDER.

Procedendo. This is a prerogative writ which issues (1) when the judge of an inferior Court delays the parties to a proceeding before him, by not giving judgment for one side or the other, when he ought to do so; or (2) when a cause has been removed from an inferior Court to a superior Court improperly or on insufficient grounds, and the superior Court thinks fit to remit or remove it back to the inferior Court. In the former class of cases the writ of mandamus (q.v.) is more frequently used. See WRIT.

Formerly where a defendant "prayed in aid" of the King (see AID PRAYER), proceedings were stayed until the Court had received out of the Chancery a writ *procedendo in loquela* (to proceed to deliver judgment).

Procedure. See PRACTICE.

Proceeding. See ACTIONS AND PROCEEDINGS.

Process is a form of proceeding taken in a Court of justice for the purpose of giving compulsory effect to its jurisdiction. The process of the Supreme Court of Judicature consists of writs (q.v.) and originating summonses (q.v.).

In civil actions process is of two kinds: (i) Against a defendant, and this again is of two kinds, viz., (a) process to compel him to appear, now consisting of a writ of summons or originating summons; and (b) process of execution, by which the judgment, decree, etc., is executed or carried into effect (see EXECUTION). (ii) Process against persons not parties to the action, *e.g.*, process to summon jurors, witnesses, etc.

Process in a proceeding in foreign attachment (q.v.) denoted the attachment paper served upon the garnishee.

In the practice of the Privy Council in ecclesiastical appeals, "process" means an official copy of the whole proceedings and proofs of the Court below, which is transmitted to the registry of the Court of Appeal by the registrar of the Court below in obedience to an order or requisition requiring him so to do, called a monition for process, issued by the Court of Appeal. See MONITION.

In criminal proceedings, process means those writs which are or were issued to bring in a person to answer an indictment which has been found against him. Summary process consists, or consisted, of the writs of *venire facias*, *distringas* and *capias ad respondendum* (q.v.), though a justice's warrant is now commonly used (see WARRANT). If summary process is ineffectual, process of outlawry (q.v.) may in theory be issued; but it never is used now.

Formerly process in common law actions was much more complicated and important than now. It was either original or judicial. The former (which was so called because at one time it commenced with the original writ issued out of Chancery) had for its object to compel the defendant to appear (see WRIT). Original process against either the person or property of the defendant was called single process; when it was against both it was called mixed. Judicial process was that which issued out of the common law Court, either when the original writ was returned or without an original being issued at all. When original writs fell into disuse, an action was commenced by process issued out of the common law Court to compel the defendant's appearance, to compel him to give bail, etc., and this was called mesne process; the term also included other kinds of process, *e.g.*, jury process, or writs to compel the attendance of jurors. Writs used to revive an action or remove it into another Court, or the like, were called "judicial process in the nature of new originals." Process of execution or final

process was much the same as at present, except that imprisonment for debt has been abolished in most cases (see ARREST).

Processu continuando, De. Anciently this was a writ which directed the continuance of process if the Chief Justice or other justice in the commission of OYER ET TERMINER (q.v.) happened to die during the currency of the commission.

Prochein amy. See NEXT FRIEND; AMY.

Prochein Avoidance. This means next avoidance. See AVOIDANCE.

Proclamation. See FINE.

Proclamations, Royal. The Statute of Proclamations, 31 Hen. 8, c. 8, gave Royal Proclamations the force of Acts of Parliament; but this enactment was repealed by the statute 1 Edw. 6, c. 12 s. 4. The statute of Henry VIII. had legalised—for the time being—the practice of legislating by way of proclamation which the Crown had from time to time pursued. The practice was not abandoned after the enactment of the statute of Edward VI.; but in 1610 it was decided in the *Case of Proclamations* (see DELIBERANDUM EST, ETC.) that the practice was without legal warrant: and it ceased when the Star Chamber (q.v.) was abolished.

If and when martial law (q.v.) became necessary, a Royal Proclamation would be one of the means by which it could be set up: but such a proclamation would not involve a claim by the Crown of any right to legislate, for the proclamation, like martial law itself, would be entirely extra-legal.

No question of law-making arises in connection with the issue of Royal Proclamations for the usual purposes, that is to say, to assemble or dissolve Parliament, to appoint days of public thanksgiving (see FAST DAYS), to declare peace or war, to annex new territories, to constitute new colonies, etc.

A Royal Proclamation is valid in law—that is to say, has such force as the law allows—if published in the *London Gazette* (Crown Office Act, 1877, s. 3 (3)). It can be proved by a copy purporting to be printed by the King's printer (Evidence Act, 1845, s. 3).

Proclamations, Statutory. These, as distinguished from Royal Proclamations—which are issued under the prerogative—are issued by the Crown under statutory powers, which give them the force of law. The most important are those issued to regulate the coinage under the Coinage Acts, 1870 and 1891. Most statutes now, however, authorise the issue of Orders in Council (q.v.) rather than proclamations.

Pro confesso. *Under the old practice in Chancery, when it appeared that a defendant in a suit had absconded to avoid being served* with the bill, or absconded after being served and without putting in an answer, the Court might order the bill to be taken *pro confesso* (as if the defendant had confessed or admitted the truth of it), either immediately or at some future time. The cause was accordingly set down for hearing, and such decree was made as the Court thought just.

See DEFAULT.

Proctors. In the Ecclesiastical and Admiralty Courts proctors discharged duties similar to those of solicitors and attorneys in other Courts. They used to be empowered to institute or withdraw proceedings by an instrument called a proxy, signed by the litigant, attested, and deposited in the registry of the Court.

By the statute 33 & 34 Vict. c. 28, s. 20, attorneys and solicitors were empowered to practise in the Ecclesiastical Courts, except the provincial Courts of York and Canterbury, and the diocesan Court of London; and they were admitted to these excepted Courts by the Solicitors Act, 1877, s. 17.

By the Judicature Act, 1873, s. 87, proctors of the then existing Admiralty Court were entitled solicitors of the Supreme Court.

At Oxford and Cambridge, proctors are university officials who have disciplinary powers over members of the universities.

In Convocation (q.v.) proctors are the representatives of the chapters of cathedrals and of the beneficed clergy of each diocese.

See ARCHES, COURT OF; QUOD CLERICI BENEFICIATI DE CANCELLARIA; KING'S PROCTOR.

Procuration. Agency. The abbreviations "*per proc.*" or "*p.p.*" following a signature upon a bill of exchange indicate that the signatory signs only as an agent. Such signature binds the principal only in so far as the agent signs within the limits of his authority (Bills of Exchange Act, 1882, s. 25), and does not make the agent personally liable (s. 26).

Procuration Fee. A commission taken by scriveners, brokers, etc., for procuring loans of money. This was limited to five shillings per cent. per annum by the statute 13 Anne, c. 15, repealed by the Usury Law Repeal Act, 1854.

Procuration (of Women). The procuring of women or girls for immoral purposes is punishable on indictment under the Criminal Law Amendment Act, 1885, ss. 2 and 3, as amended

by the Criminal Law Amendment Act, 1912, ss. 2, 3.

See also CARNAL KNOWLEDGE; CORROBORATION.

Procurations; Procurationes. These were contributions of provisions made by parochial priests for the sustenance of bishops and archdeacons when upon visitation. They were subsequently commuted to payments in money. The right to receive them is understood to still exist; but they can be sued for only in the Ecclesiastical Courts; and the Ecclesiastical Commissioners, who are entitled to receive these payments where the estates of bishops have vested in the Commissioners under the Ecclesiastical Commissioners Act, 1860, have ceased to claim them.

Procurator. One, who acts on behalf of another. In the old law books the proxies (q.v.) of peers were sometimes termed *procuratores*, and the bishops, as members of the House of Lords, were sometimes described as the *procuratores ecclesiarum*. In 1327, Trussel, Speaker of the House of Commons, acting as "*procurator*" of both Houses, renounced allegiance to Edward II. *Procurator* was also an early form of the present *proctor* (q.v.).

Procurator-General and Treasury Solicitor. See TREASURY SOLICITOR.

Prodes homines. In the old books this meant the barons or other tenants *in capite*.

Proditorie. (Treasonably.) The word was anciently necessary in an indictment for treason.

Producent. Formerly used in ecclesiastical law as meaning a party calling a witness

Production. The High Court of Justice has a general power to order a party to an action or other proceeding to produce to the Court any documents in his possession or power relating to the matters in question in the action, and the Court may deal with the documents so produced as it thinks right (Ord. 31, r. 14). It has also power to order a party to produce any documents in his possession for the inspection of any other party, unless they are privileged from production. See AFFIDAVIT; DISCOVERY; INSPECTION; NOTICE TO PRODUCE; PRIVILEGE.

Where a person is entitled to property in reversion or remainder expectant on the death of another person, and has reason to believe that that person (called the *cestui que vie* (q.v.)) is dead, and that his death is concealed, he may apply to the Chancery Division of the High Court for an order directing the person in possession of the property to produce the *cestui que vie* to persons named by himself or in case of non-production to them, the *cestui que vie* is ordered to be produced in open Court or to commissioners appointed by the Court, and on failure of production the applicant may take possession of the property as if the *cestui que vie* were actually dead (Cestui que Vie Act, 1707, s. 1).

Pro falso clamore suo. Anciently in a judgment for a defendant the unsuccessful plaintiff was in certain cases amerced (see AMERCIAMENT) *pro falso clamore suo* (for his groundless complaint).

Profert. Formerly the general rule was that where a party to an action relied in his pleading on a deed under seal, to which he was party or privy, the deed had to be "shown forth" or produced to the Court. Hence the party in his pleading used to allege that he brought the deed into Court, although it was not actually done. This was called "*profert in curiâ*," and entitled the opposite party to "*oyer*" of the deed (see OYER). *Profert* and *Oyer* were abolished by the Common Law Procedure Act, 1852, s. 55.

Professed; Profession. Formerly a man was said to be professed or "entered and professed in religion" when he had entered a religious order, taken the habit of religion and vowed three things, "obedience, willfull poverty, and perpetual chastity." A nun was also said to be professed. Profession operated as a civil death (see DEATH). Since the Reformation, however, religious profession is not recognised by the law.

"Professional privilege" is the privilege which exempts barristers and solicitors from disclosing matters confided to them in their professional capacity by clients. See CONFIDENTIAL COMMUNICATIONS; PRIVILEGE.

Profit.—I. In its primary sense, profit signifies advantage or gain in money or in money's worth. Thus, in an action in the Chancery Division for infringement of a patent or copyright, the plaintiff generally has his election whether the defendant shall be ordered to pay him the damages caused to him by the infringement, or the profits which the defendant has made by the wrongful use of the patent or copyright (see INQUIRY).

II. In the law of real property "profit" is used in a special sense to denote a produce or part of the soil of land. Therefore, "if a man seised of lands in fee by his deed granteth to another the profit of those lands, to have and to hold to him and his heires, and maketh livery *secundum formam chartæ*, the whole land itselfe doth passe: for what is the land

but the profits thereof; for thereby vesture, herbage, trees, mines and all whatsoever parcell of that land doth passe." (*Co. Litt.* 4B). In the old books, an easement is defined to be a privilege, without profit, which one neighbour hath of another." See TERMES DE LA LEY *s.v.* EASEMENT.

Profits in this sense are of three classes. (i) Profits lying in render consist of rents, dues and services rendered to a lord by his tenant. They are so called because it is the duty of the tenant to pay or tender them to the lord, as opposed to (ii) profits *à prendre*, which are rights of taking the produce or part of the soil from the land of another person, and (iii) the casual profits which accrue to a lord from his tenants "by chance and unlooked tor," such as escheats (*Co. Litt.* 92B).

Profits *à prendre* consist of rights of common (see COMMON), and rights of sole or several pasture, vesture and herbage (see PASTURE; VESTURE). The custom of tin-bounding (q.v.) is also sometimes treated as a profit *à prendre*. The right of taking water from a well or stream on another's land is not a profit *à prendre*, but an easement. A profit *à prendre* may be claimed by grant or prescription, or, in the case of copyholders, by custom. See PRESCRIPTION; PRESCRIPTION ACT.

See MESNE.

Pro forma. As a matter of form.

Pro hac vice. For this occasion—as when a Lord High Steward (q.v.) is appointed for the trial of a peer.

Prohibited Degrees. See AFFINITY; LYNDHURST'S (LORD) ACT.

Prohibitio de vasto directa parti. A judicial writ which formerly could be addressed to the tenant of lands which were in controversy or to anyone making waste upon glebe lands; it commanded that such waste should cease.

Prohibitio formata de Statuto Articuli Cleri. (A Prohibition made upon the Articles of the Clergy.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 209), s.v. *Statutes of Uncertain Date;* printed also in the *Statutes at Large* (Vol. 9, App., p. 29) as of uncertain date. It appears to have been framed on certain *Articuli Cleri* of 51 Hen. 3. See 2 *Inst.* 600.

Prohibition. The writ of prohibition is a writ issuing out of the High Court to restrain an inferior Court within the limits of its jurisdiction. It is granted in all cases where an inferior Court exceeds its powers, either by acting where it has no jurisdiction, or where, having a primary jurisdiction, it takes upon itself the decision of something not included within its jurisdiction.

Prohibitions are of three kinds. (1) An absolute prohibition is peremptory, and wholly ties up the inferior jurisdiction, but if the superior Court afterwards comes to the conclusion that the matter relied on is not a sufficient ground for prohibition, a writ of consultation may be awarded, by which the cause is remanded to the inferior Court; this latter writ seems in practice to be awarded only in ecclesiastical cases (see CONSULTATION). (2) A temporary prohibition (sometimes called a prohibition *quousque*) is operative only until a particular act is done, and is *ipso facto* discharged on the act being done. (3) A limited or partial prohibition (sometimes called a prohibition *quoad*) extends only to that part of the proceeding which exceeds the jurisdiction of the inferior Court, allowing it to proceed as to the residue.

The writ is applied for in criminal matters by motion to a Divisional Court except during the Long Vacation, when it may be granted by a judge in chambers *ex parte* or on summons; in civil matters it is granted either by a judge in chambers *ex parte* or on summons, or by the Divisional Court on motion. It will in no case be granted without an affidavit. If the defendant appears and contests the matter, the Court may, where the question involved is doubtful, order that there be pleadings as in an ordinary action for damages: but where the matter is clear the writ will issue without pleadings; and (County Courts Act, 1888, s. 128) where the writ is applied for against a County Court the matter is always disposed of without pleadings.

See PLEA.

Pro indiviso. Lands held by two or more persons, none of whom knew his particular portion—as coparceners, for instance—were said to be held *pro indiviso* (as undivided).

Pro interesse suo. Where sequestrators acting under a writ of sequestration have seized property apparently belonging to the party in default, any person claiming that it belongs to him must make an application to the Court for an inquiry as to the nature of his interest therein. This is called an inquiry *pro interesse suo*. In the Chancery Division the inquiry is conducted in the usual way before the Master, and he makes his certificate of the result. If it is in favour of the claimant, the Court directs the sequestrators to deliver up the property to him. The same rule applies where property is taken possession of by a receiver. See CERTIFICATE; INQUIRY.

Prolixity is the allegation of facts at unnecessary length, either in a pleading or affidavit. The party offending may be ordered to pay the costs thereby occasioned (Ord. 19, r. 2; Ord. 38, r. 2), or the affidavit may, by virtue of the inherent power of the Court, be ordered to be taken off the file.

Prolocutor. One of the members of the Lower House of Convocation (q.v.) is selected by the members of that House to represent their resolutions and opinions to the Upper House. He is known as the Prolocutor and sometimes also as the Referendarius. The office is always filled at the beginning of each sitting of Convocation; the Prolocutor has the power of appointing a deputy; and if a vacancy occurs during the sitting there must be a new election. The appointment of the Prolocutor or of a deputy requires confirmation by the Archbishop.

One of the members of the Upper House is Prolocutor thereof and presides over its sittings.

Lambarde, writing in 1635, says that the Keeper of the Great Seal (see LORD KEEPER) was the Prolocutor or mouth of the Higher House of Parliament, that is to say, was the Speaker of the House of Lords. See CHANCELLOR.

Promise. Promises are of two kinds. A true promise is the expression of an intention to do or forbear from some act, made by one person (the promisor) to another (the promisee). Expressions in the form of promises, but reserving an option as to their performance, and illusory promises (*e.g.*, a promise by me to pay B. such a sum as I think proper), are not true promises.

True promises are either express or implied; thus, if I request A to lend me £50, and he does so, a promise by me to repay it is implied. See EXPRESS.

To have legal effect, a promise must either be under seal, when it forms a covenant (q.v.), or must form part of a contract, that is, be made in consideration of something done or to be done in return by the promisee (see CONSIDERATION; CONTRACT). When that consideration consists of another promise, each party is both a promisor and a promisee, and the contract consists of mutual promises; thus, in an ordinary contract of sale, the vendor's promise to deliver the goods is in consideration of the purchaser's promise to pay for them, and *vice versa*. Mutual promises are said to be "independent" where either party may sue the other for the breach of his promise and where it is no excuse for the party sued to allege a breach by the plaintiff of his own promise (see APPORTIONMENT OF CONTRACTS): "dependent," when the performance of one promise depends on the performance of the other, and therefore, until the prior condition is performed, the other party is not liable on his promise; as where A promised B to keep some buildings in repair on condition of their being first put into repair by B: "concurrent," where both promises are mutually dependent; thus, where A agrees to sell property to B, neither can sue the other without showing that he has performed or is ready to perform his part of the contract.

Fictitious promises, sometimes called implied promises, or promises implied in law, occur in the case of those contracts which were invented for the purpose mentioned under CONTRACTS (q.v.).

Promissory Note. "A promissory note is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer" (Bills of Exchange Act, 1882, s 83 (1)). It may contain also a pledge of collateral security (s. 83 (3)) but it may not contain anything else. It may be made by two or more persons, who may make themselves liable jointly or severally (s. 85). The person who signs the note is called the maker. Promissory notes are negotiable or transferable in the same manner as bills of exchange (q.v.).

The legal effect of making a note is an absolute contract by the maker to pay the note. As to the effect of an indorsement, see BILL OF EXCHANGE.

The rules are the same in both cases, the maker of a note being in the same position as the acceptor of a bill (s. 89 (1)) save as regards the exception set out in s. 89 (3).

Promoter. Anciently this meant the persons who laid themselves out to bring, as common informers, penal (q.v.) and popular (q.v.) actions. They were not in good repute. Coke calls them "*turbidum hominum genus.*" Now it generally means either a person who procures the passing of a private Act of Parliament or a person who "floats" a company, in which latter case it means, for the purposes of s. 84 of the Companies (Consolidation) Act, 1908, a person "who was a party to the preparation of the prospectus" [of the company] "or of the portion thereof containing the untrue statement" [in question] "but does not include any person by reason of his acting in a professional capacity for persons

engaged in procuring the formation of a company."

In the Lands Clauses Consolidation Acts "promoters of the undertaking" means the company, commissioners, etc., or private persons who are empowered to execute the works or undertaking authorised by the special Act (Lands Clauses Consolidation Act, 1845, s. 2). See ACT OF PARLIAMENT; STATUTE.

In the practice of the Privy Council in ecclesiastical appeals, a promoter is a person who brings an appeal from the judgment of an inferior Court. See OFFICE OF THE JUDGE.

Promovent. This is the plaintiff in a suit of DUPLEX QUERELA (q.v.).

Proof.—I. In the law of evidence, an allegation of fact is said to be proved when the tribunal is convinced of its truth, and the evidence by which that result is produced is called the proof. Where a person who makes an allegation is bound to prove it, the burden or onus of proof (*onus probandi*) is said to rest on him. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. See EI INCUMBIT PROBATIO, ETC.

Where a person on whom the burden of proof lies, adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof: that is, his allegation is taken to be true, unless his opponent adduces evidence to rebut the presumption. See EVIDENCE; PRESUMPTION.

II. When evidence is to be given *vivâ voce*, *e.g.*, at the trial of an action, the solicitor of the party on whose behalf a witness is to be called usually sees the witness beforehand, and takes down a statement of the facts on which he is able to give evidence. This statement is called the "proof" of the witness. A copy of it is furnished to the counsel of the party for his guidance in examining the witness.

III. In Admiralty practice, "proof" was equivalent to "evidence," and was divided into three kinds,—proofs by affidavit, by written depositions and by oral examination of witnesses in open Court. The rules as to evidence in Admiralty actions are now the same as in other actions.

IV. In bankruptcy, "proof" denotes not only the operation of proving the existence of a debt owing from the bankrupt's estate, but also the affidavit, declaration, etc., by which debts are usually proved: and hence to "prove against the estate" means to bring forward a claim in that way. An ordinary proof is an affidavit by the creditor to the effect that the bankrupt was at the date of the order of adjudication, and still is, justly and truly indebted to the creditor, stating the amount and the consideration for the debt, and whether the creditor holds any security for it. See Bankruptcy Rules, 1915, r. 250, and Form 60 in Appendix of Forms. See CREDITOR; DEBT; SECURITY.

Formerly there was a rule that if a person was liable in respect of distinct contracts,—either as member of two or more distinct firms, composed in whole or in part of the same individuals; or as a sole contractor and also as member of a firm,—then the creditors under those contracts could not prove against the estates of the two firms in the one case, or against the several estate of the sole contractor and the joint estate of his firm in the other case, but could only prove against one estate. This rule against double proof was abolished by the Bankruptcy Act, 1869, s. 37. Now the Bankruptcy Act, 1914, Sch. II. (19) also provides against the operation of the rule. But if a firm is carrying on business in England and abroad, and its property abroad is divided among its creditors, those of them who prove against the estate in England must give credit for what they have received abroad.

When a proof has been admitted by the trustee, it may afterwards happen that circumstances are disclosed which, if known at the time of proof, would have excluded the creditor from the right to prove, wholly or in part; or circumstances may arise after proof so as materially to change the state of the debt: and in these cases it becomes necessary either to expunge the proof,—that is, to reject it retrospectively, as if it had never been made; or to reduce it,—that is, reduce the amount on which the creditor is to receive dividends, as if he had originally proved for the smaller amount. See Sch. II (24-27) of the Bankruptcy Act, 1914.

V. An executor is said to prove a will when he obtains probate of it, either in common or in solemn form. See PROBATE.

Property.—I. In its largest sense "property" signifies things and rights considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured. Property includes not only ownership, estates, and interests in corporeal things, but also rights such as trade marks, copyrights, patents, and rights *in personam* capable of transfer or transmission, such as debts.

Property is of two kinds, real and personal; as to which see those titles.

II. "Property" also signifies a beneficial right in or to a thing. Sometimes the term is used as equivalent to "ownership"; as where we speak of the right of property as opposed to the right of possession (q.v.), or where we speak of the property in the goods of a deceased person being vested in his executor. The term is chiefly used in this sense with reference to chattels: "the ownership of a chattel personal is termed a propertie," says Finch (*Finch, Law* 176).

Property in this sense is divided into general and special or qualified.

General property is that "which every absolute owner hath." (*Co. Litt.* 145B). See OWNERSHIP.

"Special property" has two meanings. First, it may mean that the subject-matter is incapable of being in the absolute ownership of any person. Thus a man may have a property in deer in a park, hares or rabbits in a warren, fish in a trunk, etc.; but it is only a special or qualified property, for if at any time they regain their natural liberty his property instantly ceases, unless they have *animus revertendi*. (See ANIMALS FERÆ NATURÆ.) Secondly, a person may have a special property in a thing in the sense that he can only put it to a particular use. Thus, in the case of a bailment (q.v.), the bailee has a special property in the thing bailed, for he is only entitled to deal with it in accordance with the contract of bailment; but he can maintain an action in respect of it against a wrongdoer. So possession is said to confer a special property, by which is meant that the possessor of a thing is deemed to be owner as against everyone who cannot show a better title. See MELIOR EST, ETC.

Property Qualification. The enactments requiring candidates to be possessed of certain real or personal property as a qualification for election were abolished as regards Parliament by the statute 21 & 22 Vict. c. 26, and as regards municipal corporations and local governing bodies by the Town Councils and Local Boards Act, 1880, 43 Vict. c. 17.

See QUALIFICATION.

Property Tax is income tax (q.v.) payable in respect of landed property under the Income Tax Act, 1853, s. 2, Sch. A.

Propound. An executor or other person is said to propound a will or other testamentary paper when he institutes an action for obtaining probate in solemn form. (See PROBATE.) The term was formerly also used technically as meaning to make the allegations in the statement of claim, by which the plaintiff alleges that the testator executed the will with proper formalities, and that he was of sound mind at the time.

Proprietary Chapels. These are chapels erected by and belonging to private persons, and not consecrated for divine service. Such a chapel has no parochial rights, unless acquired by a composition with the patron, incumbent and ordinary of the parish church, nor can public divine service be celebrated in it except with the consent of the incumbent and the licence of the bishop. The bishop, on the other hand, has no authority over such a chapel. Such chapels were formerly sometimes erected as commercial speculations; but, in view of the facilities for forming new parishes under the various Church Building Acts passed since 1818, proprietary chapels are now rare. Some unconsecrated private chapels have been converted to secular uses.

The Private Chapels Act, 1871, deals only with the chapels, whether consecrated or unconsecrated, of colleges, schools, hospitals, asylums, or public or charitable institutions.

Proprietary Medicines. These are (1) about five hundred preparations—such as Browne's British Pills and Solander's Sanative Tea—of which the very names are unknown to-day; (2) all other preparations intended to be used medicinally by human beings, (*a*) when the vendor claims that they are made by a secret process, or that he has the exclusive right of manufacture, or (*b*) which are protected by letters patent, or (*c*) which have been advertised as beneficial (Medicine Stamp Act, 1812, s. 1, Sch.). Under the Stamp Act, 1804 (44 Geo. 3, c. 98), s. 2, Sch. B., duties were imposed on each bottle, packet, etc., of such preparations, running from 1½d., where the price was under 1s., up to £1, where the price was over £2 10s.: and under s. 3 of the Medicine Stamp Act, 1802, these duties are payable by the actual manufacturers before sale by them to the public or to retailers: they were temporarily increased by one hundred per cent. in 1915 (Finance (No. 2) Act, 1915), and this increase has been kept in force by the subsequent Finance Acts. They are payable by means of labels, of appropriate value, which are affixed to the bottle, etc., so that they are torn when it is opened (Act of 1812, s. 2). The duties do not apply to drugs sold entire by a medical practitioner, a chemist or druggist, or the holder of a patent-medicine licence (q.v.), or to preparations of mixed drugs (not coming within the definition of

proprietary medicines) prepared and sold by a medical practitioner or a chemist or druggist (Medicine Stamp Act, 1812, Sch.).

Proprietary Rights are those rights which an owner of property has by virtue of his ownership. When proprietary rights are opposed to acquired rights, such as easements, franchises, etc., they are more often called natural rights (q.v.). See OWNERSHIP.

Proprietate probanda, De. This was a writ commanding the sheriff to inquire whether goods distrained were the property of the person who had sued out a writ of replevin (q.v.). It was issued when the sheriff returned as his reason for not executing the writ of replevin the fact that some third person claimed property in the goods. The modern equivalent is a summons to interplead. See INTERPLEADER.

Proprietor is almost synonymous with "owner" (q.v.), as in the phrase "riparian proprietor." (See RIPARIAN.) A person entitled to a trade mark or a design under the Acts for the registration of trade marks and designs (q.v.), is called proprietor of the trade mark or design: see the Trade Marks Act, 1905, s. 4 and *passim*, and s. 93 of the Patents and Designs Act, 1907.

Pro rata. In proportion: see *e.g.*, FREIGHT.

Prorogation. The bringing of a session (q.v.) of Parliament to an end. This, like dissolution (which brings the Parliament to an end) can be done only by an exercise of the royal prerogative. Adjournment to a future hour on the same day, or to a future day, can be effected by either House of its own motion.

The House of Lords can at all times sit as a Court of Appeal without regard to the prorogation or dissolution of Parliament: and an impeachment is carried on from one session to another or from one Parliament to another: but all other business lapses upon prorogation and, *à fortiori*, upon dissolution, and must be reintroduced in the new session or the new Parliament.

Prosecution; Prosecutor. A prosecutor is a person who takes proceedings against another in the name of the Crown. The commonest instance of a prosecutor is in criminal matters, where the suit is said to be by "His Majesty the King on the prosecution of A. B. against C. D. (the prisoner)." The prosecutor may be a private person, in which case he is generally the person specially injured by the crime. When the crime is of a heinous nature or likely to go unpunished for want of a prosecutor, the proceedings are conducted by the Director of Public Prosecutions (q.v.), in the name of the Attorney-General.

A person who sets in motion proceedings by *scire facias* to repeal a Crown grant (see SCIRE FACIAS), or the prerogative process of information (q.v.), or mandamus, or similar proceedings, is called the prosecutor, as is also a person who institutes proceedings for attachment (q.v.). See INFORMER.

Prospectus. This is a document published by a company or municipal corporation, or by persons acting as its agents or assignees, setting forth the nature and objects of an issue of shares, debentures or other securities created by the company or corporation, and inviting the public to subscribe to the issue. (As regards companies, see s. 285 of the Companies (Consolidation) Act, 1908.) A prospectus is also usually published on the issue, in England, of bonds or other securities by a foreign State or corporation.

Prospectuses are of importance from a legal point of view, chiefly because they are not unfrequently made the vehicle of misrepresentations, so that persons induced to subscribe on the faith of the statements contained in them acquire a right of action for damages or rescission of the contract. This right, however, is limited, as a rule, to those who subscribed to the issue, and does not extend to persons who may have bought shares or bonds on the market, after seeing a prospectus inviting subscriptions: but if the prospectus is part of a scheme to induce persons to purchase in the market, then persons who have so bought may have a good cause of action for damages.

The Companies (Consolidation) Act, 1908, s 81, enacts that every prospectus inviting persons to subscribe for shares in any joint-stock company shall give a very large number of particulars, including:—the names, etc., of the directors and of the auditors; the number of shares; the minimum subscription for allotment; previous issues and commission for getting subscribers thereto; names, etc., of vendors; purchase money; payment to promoter; contents of and signatories to the memorandum; preliminary expenses; rights of voting; directors' interest in the company; etc The section, which is of great length, should be compared with the corresponding section (s. 38) of the Companies Act, 1862, in order that an appreciation of the increasing requirements of the Legislature may be arrived at. See COMPANY.

Prostitute. The main enactment is the Town Police Clauses Act, 1847, s. 28, which

makes it an offence (in a town which is subject to the Act) for a prostitute to loiter and importune passengers in a street. The corresponding London enactment is the Metropolitan Police Act, 1839, s. 54. For the definition of street, *quoad* the Act of 1847 and the Vagrancy Act of 1824, see the Public Health Acts Amendment Act, 1907, s. 81. It is an offence under s. 35 of the Act of 1847 to permit prostitutes to continue in any place of public resort: and s. 76 of the Licensing (Consolidation) Act, 1910, makes it an offence for the holder of a licence to allow them to be on his premises except for the purpose of obtaining refreshment. Children frequenting the company of a prostitute (other than a mother taking care to prevent contamination) or living with her under circumstances conducive to immorality, may be sent to a certified industrial school (Children Act, 1908, s. 58). See VAGRANCY.

Protected Transactions. Every bankruptcy is deemed to commence from, at latest, the act of bankruptcy upon which the receiving order was made, and sometimes from three months before the presentation of the petition (Bankruptcy Act, 1914, s. 37 (1)). The effect is to invalidate alienations and dispositions of property by the debtor, and judgments against him made or obtained since the commencement of his bankruptcy, and the object is to protect the general creditors against fraudulent and collusive arrangements for the benefit of particular creditors. But to prevent the rule from bearing hardly on honest creditors, the bankruptcy law excludes from its operation payments, transfers, contracts, and dealings, when made or obtained before the date of the receiving order and for valuable consideration by persons not having notice of an act of bankruptcy (s. 45); and it also excludes executions and attachments completed before the date of the receiving order without notice of the petition or of an act of bankruptcy (s. 40). These are known as protected transactions. See SETTLEMENT.

Protectio trahit subjectionem, et subjectio protectionem (*Co. Litt.* 65). (Protection involves subjection; subjection, protection.) While an alien is within the King's dominions he is subject, in many respects, to British law, but, on the other hand, he is within the protection of our law even though he be the subject of an enemy State.

Protectionibus, Statutum de. The statute 33 Edw. 1, under which the validity of a writ of protection (q.v.) could be challenged and investigated.

Protection Order. As regards licensed premises this means an order which may be made by justices when a transfer of a justices' licence has been authorised: it authorises the transferee to carry on business until the next transfer sessions or any adjournment thereof (Licensing (Consolidation) Act, 1910, s. 88).

Under s. 21 of the Matrimonial Causes Act, 1858, a deserted wife may obtain from either the High Court or a petty sessional court an order protecting her property and earnings from her husband and those claiming through him. The Married Women's Property Acts and the Summary Jurisdiction (Married Women) Act, 1895 (see DESERTION) have made applications for such orders of rare occurrence.

Protection, Writ of. This was a writ which, from a very early period, issued out of the Chancery to men absent overseas on the king's service. It made them free of all suits except some few such as the Assize of Novel Disseisin, the Assize of Darrein Presentment, Attaints, etc. It could not, as a rule, be pleaded to any suit instituted before it was issued (see the statute 13 Rich. 2, st. 1, c. 16), nor to a charge of felony. The last instance of its issue was about 1690.

The writ of protection was also issued to Crown debtors in order to prevent private creditors from getting priority of the Crown. See NON MOLESTANDO.

Protector. The protector of a settlement is a person without whose consent a tenant in tail cannot bar the entail except as against his own issue, nor a tenant in base fee enlarge his estate into a fee simple. In the absence of a protector specially appointed by the settlor, the original owner of the first estate for years determinable on the dropping of a life or lives, or any greater estate, prior to the estate tail, is the protector. (Fines and Recoveries Act, 1833, s. 22.) Thus, if land is limited to B. for life, with remainder to C. in tail, B. is the protector. The Act contains special provisions for cases in which co-owners, married women, lunatics, etc., have the first prior estate. The person to whom the prior estate was originally given remains protector, although he may have encumbered or alienated it (s. 21). Every settlor is empowered to appoint by the settlement any number of persons *in esse* not exceeding three to be protector of the settlement in lieu of the person who would otherwise have been protector, and to insert in the settlement a power of appointing a protector in the place of any protector dying or relinquishing his office (s. 32).

Although the protector fills an office somewhat similar to that of the donee of an ordinary power, he is exempt from the rules (see FRAUD) applying to dealings between the donee and the object of a power (s. 37). Thus the consent given by a protector is not invalidated by his obtaining a pecuniary benefit in consideration of his giving it. Section 37 (as Shadwell, V.-C., puts it in 11 *Sim.*, at p. 527), enables him to take a bribe. The law as to protectors of settlements of freeholds applies with certain variations to settlements of copyholds (s. 50).

See ESTATE TAIL; DISENTAILING DEED; TENANT TO THE PRÆCIPE.

Protest. In its most general sense, a protest is an express declaration by a person doing an act that the act is not to give rise to an implication which it might otherwise cause. Thus, the payment of a sum of money by A. in answer to a demand by B. would in general give rise to the presumption that the money was owing by him to B., and if A. wishes to prevent it from doing so, he pays the money under protest. As a general rule, a protest is not effectual unless the payment or other act takes place under compulsion: thus, if A. wrongfully distrains goods belonging to B., and B. pays the sum claimed for rent under protest in order to regain his goods, he may afterwards sue A. to recover the amount. (See DURESS.)

In the law of bills of exchange, a protest is a solemn declaration by a notary stating that he has demanded acceptance or payment of a bill, and that it has been refused, with the reasons, if any, given by the drawee or acceptor for the dishonour. The object of a protest is to give satisfactory evidence of the dishonour to the drawer or other antecedent party; but it is not necessary except in the case of a foreign bill (see BILL OF EXCHANGE; NOTING). Where the acceptor of a bill becomes bankrupt or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers (Bills of Exchange Act, 1882, s. 55 (5)). The advantage of a protest is that there may be an acceptance (q.v.) for honour. The expenses of the protest are recoverable where it is for non-acceptance or non-payment (s. 57 (1) (*c*)); but not where it is for better security.

In Admiralty, a defendant desiring to object to the jurisdiction must enter an appearance under protest, and then make an application by summons or motion to have the action dismissed on the ground of want of jurisdiction. Formerly a question of this kind was raised by "pleadings on protest," commenced by the defendant filing a "petition on protest," to which the plaintiff filed a reply, and so on.

See APPEARANCE, as to appearance under protest generally.

Protestation; Protestando. Protestation was once used in pleadings at common law when a party wished to prevent an admission of a fact by him in one action from being afterwards used against him in another action as an estoppel or conclusion of the truth of the fact; the use of the word *protestando* was necessary in such a pleading; and the pleading itself was known as a *protestando*. Protestation was abolished in 1834 by Rules of Court.

Prothonotary. A principal notary, that is to say, a chief clerk. The title was borne by three officers of the Common Pleas and by one officer of the King's Bench. The Prothonotary of the King's Bench recorded all civil actions—all criminal matters in that Court were recorded by the Clerk of the Crown Office (q.v.). The prothonotaries of the Common Pleas, in conjunction with the filacers (q.v.), performed functions analogous to those of the modern Master. Both prothonotaries and filacers were abolished in 1837 by an Act which replaced them by the Masters of the Common Pleas. See MASTERS OF THE KING'S BENCH, ETC.

Protocols. These are the original acts and proceedings in an ecclesiastical cause taken down by a notary (πρῶτος κολλὴ, the things first glued together, *i.e.*, the original drafts).

For the last hundred years it has also meant the minutes of a deliberative assembly of the representatives of nations.

Protonotary. See PROTHONOTARY.

Prove. See PROOF; PROBATE.

Provided School. The popular synonym for a council school (q.v.).

Provident Societies. See INDUSTRIAL AND PROVIDENT SOCIETIES.

Province. A province is a district subject to an archbishop's jurisdiction. England is divided into two provinces, those of Canterbury and York, and each province contains many dioceses. (See ARCHBISHOP; DIOCESE; PROVINCIAL COURTS.) For the dioceses in each province, see BISHOPRICS.

Provincial Courts. These are ecclesiastical Courts within the provinces of the two primates, and are hence also called the Courts of the Primates. They are (1) in the province of Canterbury—(*a*) the Court of Arches (q.v.); (*b*) the Court of the Vicar-

General, wherein bishops of the province are confirmed; (*c*) the Court of the Master of the Faculties, wherein matters relating to notaries public are dealt with (see FACULTY; NOTARY); (*d*) the Court of Audience (q.v.); and (*e*) the Court of the Commissary (q.v.) of the Archbishop: (2) in the province of York—(*a*) the Supreme Court or Chancery Court (see CHANCERY); (*b*) the Consistory Court (q.v.); and (*c*) the Court of Audience (q.v.). See DIOCESAN COURTS.

Provision; Provisors. In the law of præmunire (q.v.) a provision was a nomination by the Pope to an English benefice before it became void, though the term was afterwards indiscriminately applied to any right of patronage exerted or claimed by the Pope. The statute 35 Edw. 1, was the first statute against provisions. Persons who attempted to take the benefit of provisions were called provisors.

Provisional Order. Under various Acts of Parliament (see *e.g.*, ELECTRIC LIGHTING) public bodies and departments of the Government are authorised to inquire into matters which, in the ordinary course, could only be dealt with by a private Act of Parliament, and to make orders for their regulation. These orders have no effect unless they are confirmed by an Act of Parliament, and are hence called provisional orders. Several orders may be confirmed by one Act. The object of this mode of proceeding is to save the trouble and expense of promoting a number of private Bills.

As to provisional orders by the Ministry of Agriculture and Fisheries, see INCLOSURE; SEWER. Provisional orders are also made by the Ministry of Health under the Public Health Acts.

Provisional Specification. See SPECIFICATION.

Proviso. This is a clause in a deed or other instrument beginning "provided always that, etc,"; in Latin, *proviso semper*. It operates as a condition, limitation, qualification or covenant, according to its tenor. A common instance of a proviso is that for re-entry contained in almost every lease (see RIGHT OF ENTRY); another is the proviso for redemption contained in an ordinary mortgage (q.v.).

Proviso, Trial by. Where the plaintiff in an action desisted from bringing his suit and did not bring it to trial in convenient time, the defendant might formerly take out the *venire facias* (q.v.) to the sheriff (containing the words *proviso quod*) upon which the case was set down for trial. This was called "Trial by Proviso." An alternative course was after 1852 permitted to the defendant under s. 101 of the Common Law Procedure Act, 1852; but s. 116 of that Act preserved the right to trial by proviso. Since the Judicature Acts the defendant's remedy has, of course, been to dismiss for want of prosecution.

Provisor victualium. Before the abolition of the right of purveyance (q.v.) this was the officer of the royal household who exercised the right.

Provisors. (See PROVISION.) The statute 25 Edw. 3, st. 4, was more particularly known as the Statute of Provisors, but it was only one of a series directed against provision.

Provocation. This, as the element in a case of homicide which will reduce the offence from murder to manslaughter (q.v.), does not mean such resentment as arises from the conduct of, for instance, a nagging woman, whose conduct is, in colloquial phraseology, provoking. Mere words are not, as a rule, sufficient to constitute provocation, and acts are held to constitute provocation only where they are sufficient to deprive the average man of his self-control, and where the blow, etc., which caused death, was a natural result of such loss of control. And so where a woman slaps a man's face and he kills her by stabbing her, it will be murder.

Provost-Marshal. The statutory authority for the existence of this officer is the Army Act, s. 74 (as amended by the Army (Annual) Act, 1907, s. 10 (4)), which enacts that provost-marshals may be appointed by general officers commanding. They and their assistants are intended to secure "the prompt repression of all offences which may be committed abroad," and they are to "arrest and detain for trial persons subject to military law committing offences," and to execute punishments ordered by courts-martial.

In the Navy, a senior member of the ship's police is appointed provost-marshal when a court-martial is to be held. He arrests the accused and produces him to the Court.

Proxenta; Proxenete. A marriage broker. See BROCAGE.

Proxies. The same as procurations (q.v.).

Proxy. This has been judicially defined as "a lawfully constituted agent." As regards companies under the Companies Acts, it denotes (i) a person appointed to represent another at a meeting or number of meetings; (ii) the instrument containing the appointment. It requires a stamp of 1*d*. (Stamp Act, 1891, s. 80, Sch. I.). In most companies a shareholder has the power of

appointing any other shareholder as his proxy to vote at meetings.

In bankruptcy, any creditor may, by an instrument in the prescribed form, appoint a person to represent him as a proxy in the matter of the bankruptcy; if in general terms, the proxy operates as an authority for the appointee to vote at all meetings, receive dividends, and generally to act in all matters in the bankruptcy as fully as the creditor himself could act. In the analogous process of winding up a company, creditors and contributories can vote by proxy: see Companies (Winding-up) Rules, 1909, rr. 139, 140.

From an early date, peers had exercised the right of voting in the House of Lords by proxy entrusted to another peer. At first this was done only by permission of the Crown in each case. Then the permission was dispensed with and votes were given by proxy as of right, many proxies being sometimes held by the one peer. In 1868 the Orders of the House on the subject were to the effect that no peer should hold more proxies than two, and that proxies should not be used at all in committees or when the House was sitting as a Court of Appeal. In 1868 it was unanimously resolved by the House that the use of proxies should be discontinued, and there has never been any question as to its being revived.

Prudenter facit qui præcepto legis obtemperat (5 *Rep.* 49). (He acts prudently who complies with the command of the law.) This obvious truism is quoted in connection with the observation that "he who commits a wrong and at the first confesses it and obeys the king's command by his writ, shall not be amerced." As to one who took the opposite course, see PECCATUM PECCATO, ETC.

Pryk. In the reign of Richard II. we find land "per servitum unum equum, unum saccum et unum *pryk* in guerra Walliæ" (subject to supplying one horse, one sack (see SACCUS) and one pryk for the Welsh war). The *pryk* was the spiked spur of the mediæval horseman, resembling—on a large scale—the woman's spur of to-day.

Public. See ACT OF PARLIAMENT; COMPANY; DIRECTOR OF PUBLIC PROSECUTIONS; HIGHWAY; NAVIGABLE; POLICY; RIVER.

Public Agent. See PUBLIC OFFICER.

Publican. There is no statutory definition of this term. It means one who keeps a public-house (q.v.).

Public Analyst. Section 25 of the Sale of Food and Drugs Act, 1899, defines this expression for the purposes of that Act.

Publication. Before 1837 the law was that, for the validity of a will, it was necessary that it should be proved to have been "published" by the testator, that is to say, had been declared by him, in the presence of witnesses, to be his will; but proof of "publication" was not insisted on in the case of a holograph will. Now under the Wills Act, 1837, s. 13, no proof of publication is required other than such as is implied by properly attested execution.

In the practice of the former Court of Chancery, it was at one time customary to pass a rule (or order) for the "publication" of the depositions of witnesses—that is to say, to authorise the giving out of copies—but this ceased to be the practice after all parties were permitted to attend the examination of witnesses.

As regards copyright (q.v.) the Copyright Act, 1911, s. 1 (3), enacts that "For the purposes of this Act, publication in relation to any work means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall be deemed to be publication of such works"

As regards designs (q.v.) publication may be by prior use or in books, etc., or by communication to third persons or by exhibition at exhibitions generally. Only a "new and original design not previously published in the United Kingdom" can be registered (Patents and Designs Act, 1907, s. 49 (1)); but the exhibition of a design at certain specified exhibitions is not publication (s. 59). See NOVELTY.

As regards patents (q.v.), only a new and original invention (see NOVELTY) can be patented. The invention is not new and original if the public have been made acquainted with it by a prior publication. Such publication may be by prior user or by prior written or printed matter which has brought the invention to the knowledge of third persons generally. But the Patents and Designs Act, 1907, s. 41, provides that (1) publication in any fifty-year-old specification, or in any provisional specification; and (2) publication without the inventor's knowledge and consent shall not be deemed publication unless, in the case of unauthorised publication, there has been a failure to obtain protection for the invention with reasonable diligence.

In any action of libel (q.v.) or slander the plaintiff must show that the defamatory words were actually published, that is to say, brought to the knowledge of some person other than the plaintiff. There is publication if the defendant has "published" the libel to the husband or wife of the plaintiff, but not if libel has been "published" to the husband or wife of the defendant or if the words have been written or spoken on an occasion with regard to which there is privilege (q.v.). Whether the publication is intentional or accidental is immaterial, except as affecting the amount of damages.

In criminal proceedings for libel, publication to the prosecutor himself is sufficient to constitute publication in law; the publication must be intentional; and, even though there be no actual publication, any overt act towards publication will constitute the common law offence of attempting to publish a libel.

As regards civil proceedings for libel, publication means bringing the alleged libel to the knowledge of some person other than the plaintiff.

Public Authorities. There is no statutory or other definition of this term. It, however, means any person for whose protection in a particular capacity provision is made by the Public Authorities Protection Act, 1893. That Act (s. 2) enacts (with regard to "any action, prosecution, or other proceeding . . . against any person for any act done in pursuance or execution or intended execution of any Act of Parliament or any public duty or authority or in respect of any alleged neglect or default in the execution of any such act, duty or authority")—

(a) The action, etc., must be commenced within six months of the ceasing of the cause of action;

(b) If judgment in such action, etc., be for the defendant, he shall have costs as between solicitor and client [*unless he is wholly deprived of costs under Ord.* 65, *r.* 1];

(c) If the action be for damages, there may be tender of amends; if the action be commenced after tender or is proceeded with after payment into Court of the sum tendered, and the plaintiff does not recover more than that sum, he shall not recover any costs after tender or payment, and the defendant shall have solicitor and client costs as from tender or payment;

(d) If in the opinion of the Court the defendant was not given sufficient opportunity of tendering amends before action brought, then he may be awarded solicitor and client costs.

Public Body. Section 7 of the Public Bodies Corrupt Practices Act, 1889, defines this expression for the purposes of that Act.

Public Building. Section 5 (27) of the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.) defines this expression for the purposes of that Act.

Public Health. The enactments relating to public health are (as regards England generally) the Public Health Acts, which begin with the Public Health Act, 1875, and end with the Public Health Act, 1908: see s. 2 (2) of the last-mentioned Act. The Act of 1875, eight other Acts passed from 1878 to 1890, and the Public Health Acts Amendment Act, 1907, are (see s. 2 (3) of the Act of 1907) collectively entitled "the Public Health Acts, 1875 to 1907"; and they, together with the Act of 1908 above mentioned, are "the Public Health Acts" referred to in the Act of 1908.

The principal Act dealing with public health in the metropolis is the Public Health (London) Act, 1891; but other Acts, such as Michael Angelo Taylor's Act (q.v.) and the Metropolis Management Acts, 1855 and 1862, in so far as they are unrepealed, still apply.

For an early instance of a Public Health Act, see SUPER STATUTO QUE NUL JECT DUNG.

Public-house. As regards England, there is no statutory definition of this expression. It may, however, be taken as meaning generally premises on which excisable liquors are sold, for consumption thereon, to the public at large. Thus the use of premises as a club in which such liquors are sold to members only is not a breach of a covenant against use as a public-house; but the Refreshment Houses Act, 1860, s. 44, expressly provides that the sale of wine, to be consumed on the premises, under a licence for such sale and consumption, is a breach of such covenant as is mentioned above.

See VINTNER.

Public juris ("of public right"), as applied to a thing or right, means that it is open to or exercisable by all persons.

When a thing is common property, so that anyone can make use of it who likes, it is said to be *publici juris*, as in the case of light, air and public water. (See AIR; LIGHT; WATER; NATURAL RIGHTS.) So when a copyright or patent has expired, or a trade mark, or trade name becomes common property, the book, process, trade mark, or trade name is said to be *publici juris*, that is, any person can print or use it.

As applied to the case of water flowing through private land, *publici juris* means that the water flows in such a defined channel as

to give the owner of each piece of land through which it passes what are called rights of water in respect of it, as opposed to water which is either confined to one piece of land, as in a pond, or percolates or flows in no defined course.

Public Law. Positive law (q.v.).

Public Meeting. An assembly called together by private persons to direct attention to some matter alleged to be of public interest. If held on private premises, those present are merely licensees of the owners, or of those claiming through the owners, of such premises; if held on a public thoroughfare, there is no right to cause an obstruction. If the meeting be a lawful one, then, under the Public Meeting Act, 1908, any person creating or inciting to disorder in order to prevent the transaction of business is guilty of an offence punishable summarily and, if the meeting be a political meeting held between the issue and the return to a writ for the election of a member of Parliament, he is guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883.

No public meeting can be held within one mile of Westminster Hall during a session of Parliament (Seditious Meetings Act, 1817).

See NEWSPAPERS; TRAFALGAR SQUARE.

Public Officer. This sometimes means the holder of a public office under the Crown (see FRAUD), but it is more generally used to denote an officer of a joint-stock company or corporation. Fraudulent appropriation of money, alteration of accounts, destruction of books and papers, etc., by such a public officer are misdemeanours (Larceny Act, 1916, s. 20; Larceny Act, 1861, ss. 82-84).

The term "public officer" in the latter sense seems to be derived from the Country Bankers Act, 1826 (7 Geo. 4, c. 46), which (see ss. 4-9) provided for the appointment of public officers of banking companies, and empowered such companies to sue and be sued in the name of any such officer, although the companies themselves were not incorporated. A similar provision was frequently contained in private Acts authorising the formation of unincorporated companies. Companies formed under modern Acts are always incorporated.

The term "public officer" in the former sense is less usual than the synonymous "public agent." A public agent cannot sue in his own name in respect of any contract made by him in his public capacity, nor can he be sued thereon unless he has pledged his personal credit; he is accountable only to the Crown for moneys received by him in his official capacity; no action lies against him for acts done by his subordinates unless he was party or privy thereto; and, while he is personally liable for his own wrongful acts or omissions, no action lies against the Crown in respect of anything wrongfully done or left undone by him.

Public Offices, Sale of. The Sale of Offices Act, 1551, prohibited the sale of certain offices. The Sale of Offices Act, 1809, extends the Act of 1551 to all offices—whether civil, naval or military—under the Crown, except (see ss. 7, 8) in so far as the sale of commissions in the Army was permitted by the King's Regulations. In consequence of the abolition of purchase in the Army, ss. 7 and 8 of the Act of 1809 were repealed in 1872. Now only such payments as are specified in the Regimental Exchanges Act, 1875, can be made in connection with the exchange of commissions.

Public Place. There is no statutory definition of this expression. It occurs in many Acts of Parliament, which declare such and such a thing to be an offence if done in a "public place." In each case the meaning depends upon the context and upon the object of a statute. A place may be a "public place" at one time and not at other times. Thus a railway carriage is a public place while being used for the reception and conveyance of passengers, but not while it lies empty in a siding.

Public Prosecutor. See DIRECTOR OF PUBLIC PROSECUTIONS. It is noteworthy that, so far back as the eighteenth century, it had been suggested that there should be "an officer who might act as Deputy-Attorney-General for the Crown in superintending the regular conduct of prosecutions" (*Commons Committees' Reports* (1803), Vol. 13, p. 203).

Public Records. The General Records of the Realm which are kept at the Record Office (q.v.) in the custody of the Master of the Rolls (q.v.). Copies purporting to be sealed with the seal of the Record Office are admissible as evidence (Public Record Office Act, 1838, ss. 12, 13).

The documents to which the Act of 1838 relates are (see s. 20) "all rolls, records, writs, books, proceedings, decrees, bills, warrants, accounts, papers and documents whatsoever of a public nature" belonging to the Crown or at the commencement of the Act deposited in a number of places and offices specified in s. 1 of the Act.

See JOURNALS OF PARLIAMENT.

Public Schools. A public school, in the

widest sense of the expression, means any school which is not a private enterprise carried on without public control.

In the narrower sense it means the seven schools — Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby and Shrewsbury—mentioned in s. 3 of the Public Schools Act, 1868. These seven schools are declared by s. 8 of the Endowed Schools Act, 1869, not to be " endowed " for the purposes of that Act. They are carried on subject to the Public Schools Acts, 1868 to 1873.

St. Paul's School, the Merchant Taylors' School, Marlborough, Wellington, Bradfield, Haileybury, Clifton, Cheltenham and others, are colloquially known as public schools, but they are not affected by the Public Schools Acts.

Public Stores. The Public Stores Act, 1875, provides for the marking of certain public stores and contains various provisions for the protection of all public stores. The expression ' public stores " is not used except in the title to the Act. Section 3 declares that the Act " shall apply to all stores under the care, superintendence or control of a Secretary of State or the Admiralty or any public department or office or of any person in the service of Her Majesty, and such stores are in this Act referred to as Her Majesty's stores." Section 2 enacts that " the term ' stores ' includes all goods and chattels and any single store or article."

Public Trustee. This official, who has practically replaced the Judicial Trustee (q.v.), is appointed by the Lord Chancellor under the Public Trustee Act, 1906. The Public Trustee, under that Act and the rules made pursuant thereto, may act as trustee of English wills or settlements (with certain exceptions) precisely as a private trustee may do; but he makes a small charge for acting, whereas a private trustee makes none. The great advantage of the Public Trustee is that there can be no defalcations and that, as he is a corporation *sole*, the trouble of replacing trustees who have died never occurs. The main disadvantages would appear to be that he can scarcely administer a discretionary trust as advantageously as a private trustee, and that, when a *cestui que trust* comes of age and becomes absolutely entitled to large trust funds, he can scarcely advise a self-protective settlement with the same authority as a family solicitor of good standing. These disadvantages can, however, be got over by appointing another trustee to act jointly with the Public Trustee.

Many insurance companies, and several companies subsidiary to several of the great banks, also act as trustees, with an efficiency at least equal to that of the Public Trustee and at very much lower charges. See TRUSTEE.

Public Way. A highway (q.v.).

Public Works Loan Commissioners. This body makes advances of public funds to a multiplicity of public bodies for the construction of many things ranging from baths to lighthouses. It was established by the Public Works Loans Act, 1875, which repealed twenty-seven earlier statutes on the same subject and which, down to 1920, had itself been amended and extended by twenty other Public Works Loans Acts.

The offices of the Commissioners are at 19, Old Jewry, E.C. 2, in the City of London.

See LOAN COMMISSIONERS.

Public Worship Regulation Act, 1874. This statute contains provisions designed to prevent unlawful alterations in or additions to the fabric, ornaments or furniture of any church belonging to the Church of England, to prevent the use of unlawful ornaments, and to enforce the use of prescribed ornaments and vestures, and the observance of the rites ordered by the Book of Common Prayer. (See ECCLESIASTICAL COURTS.) The statute is, however, practically obsolete. It was indeed hardly ever put into force.

Publisher. In s. 9 of the Newspaper Libel and Registration Act, 1881 (see NEWSPAPER), the printer of a newspaper is described as the " printer and publisher for the time being," although colloquially the term " publisher " is used only with regard to books or other printed matter bound in covers.

In criminal proceedings against anyone in respect of a libel published by some other person presumably acting under his authority, it is a complete defence for the defendant to prove that he did not fail to exercise due care and that such other person acted without the knowledge, authority or consent of the defendant (Libel Act, 1843, s. 7).

See NEWSPAPER.

Puchta. Georg Friedrich Puchta was born 31st August, 1798, became professor at Erlangen, Munich, Marburg, Leipzig and Berlin, and died 8th January, 1846. He wrote numerous works on modern Roman law, especially the *Cursus der Institutionen* and the *Lehrbuch der Pandecten.*

Pufendorf. Samuel (Freiherr) von Pufendorf was born 8th January, 1632, became professor in Heidelberg, and died 16th Octo-

ber, 1694. He wrote *De jure naturæ et gentium* and other works.

Puffer. One who bids at an auction (q.v.) on behalf of the vendor.

Puis darrein continuance. Under the old common law system, a plea *puis darrein continuance* was one in which the defendant pleaded some matter of defence which had arisen "since the last continuance" or adjournment. (See CONTINUANCE.) After the abolition of continuances, the same name was given to pleas of defences which arose after the defendant has put in his plea. (See PLEA.) Under the present practice, where a ground of defence arises after the delivery of the statement of defence, the defendant may by leave of the Court or a judge deliver a further defence setting forth the same (Ord. 24, r. 2).

Puisné literally means "later born," as in the phrase *mulier puisné* (see MULIER). As applied to incumbrances, *puisne* denotes subsequent in point of date. (See PRIORITY.) In modern usage, the accent on the final "e" is dropped and the word is pronounced as puny.

While the old Common Law Courts existed, all the judges of each Court, except the chiefs, were called puisne justices or puisne barons, according to the Court.

Now "a puisne judge of the High Court of Justice means, for the purpose of this Act, a judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, and their successors respectively" (Judicature Act, 1877, s. 5) This, however, makes the appellation applicable to the Master of the Rolls: but he certainly is not generally known as a puisne judge.

Pulsator; Pulsare. In early Norman times *pulsator* meant what would now be called the prosecutor or complainant; *pulsare* meant to accuse or make complaint against.

Punctuation. Properly drawn deeds are never punctuated, and must be so drawn that their meaning is clear without any marks of punctuation. Punctuation in deeds, if it does occur, is to be wholly disregarded. Even in Acts of Parliament it is of little importance.

Punishment. See CRIME; DEATH; IMPRISONMENT; PENAL SERVITUDE; PENALTY; POLICE SUPERVISION; WHIPPING.

Pur auter vie. See TENANT FOR LIFE.

Pur cause de vicinage. See COMMON.

Purchase is used in law not only in the popular sense of buying (see VENDOR AND PURCHASER), but also in a technical sense to denote that a person has acquired land by the lawful act of himself or another, *e.g.*, by conveyance, gift or devise, as opposed to title by act of the law, such as descent, dower, curtesy, etc., and to title by wrong, as in the case of disseisin. As to escheat, see that title. See PURCHASER; TITLE.

Anciently the word "purchase" meant to acquire or seek for. Hence the old writers speak of "purchasing" land by accretion, and of purchasing writs, charters of pardon, etc.

Purchaser means, I. a person who buys property (see VENDOR AND PURCHASER); II. a person who acquires land by purchase in the technical sense of the word (see PURCHASE); III. a person who acquires land otherwise than by descent. It is in the last sense that the term is used in the Inheritance Act, 1833. See DESCENT.

Purchaser without Notice. This, as regards realty, is the technical description of one who has purchased *bonâ fide* for valuable consideration (even though inadequate) without notice (q.v.) of any prior right or title which, if upheld, would derogate from the title which he has purported to acquire. Such a purchaser, if he has got in the legal estate, will usually take priority of equitable claims ranking before him as to time; and, if he has not got in the legal estate, he will usually take priority of mere equities as distinguished from equitable estates.

Purchase, Words of. See WORDS OF LIMITATION, ETC.

Purgation. This was either canonical purgation or compurgation (q.v.) or else vulgar compurgation, that is to say, trial by ordeal (q.v.) or by battle (q.v.).

Purge. See CONTEMPT.

Purification, Feast of. The Purification of the Blessed Virgin, which falls on 2nd February. It is also, but not generally, known as Candlemas. In the statute 32 Hen. 8, c. 21, it is mentioned under its full title of "Purificatio Beatæ Mariæ Virginis." See FAST DAYS; FEASTS.

Purlieu. This is stated by Manwood to have been a certain territory of ground adjoining a forest, bounded with immovable boundaries known by matter of record only, which territory was once forest and was afterwards disafforested by the perambulations made for the severing of the new forests from the old, in accordance with the Carta de Forestâ (q.v.).

See FOREST.

Purlieu-man. One who had, within the purlieu, freehold land of the annual value of forty shillings. He could keep greyhounds on

his land, and had certain privileges as regards hunting deer: see Manwood's *Forest Laws*, s.v. "Purlieu."

Purparty is an old word for share or portion, so that to hold land in purparty with a person was to hold it jointly with him.

Purpresture is where an erection or enclosure is made on any part of the king's demesnes, or on a highway, or a common street or public water, or the like. The term is derived from the Norman-French *purprendre*, to encroach or enclose, and is not now much used, the offence being more commonly called a common nuisance (q.v.). See USURPATION.

Pursue. To pursue a warrant or authority, in the old books, is to execute it or carry it out. See EXECUTE.

Purveyance. The Crown's prerogative right to buy up provisions and other necessaries for the Royal Household at an appraised price, and of impressing horses and vehicles, at an appraised price, for the royal use. Various statutes, beginning with the statute 28 Edw. 1, c. 2, were directed against the abuse of the right; and it was so oppressive that at length it was wholly abolished by the statute 12 Car. 2, c. 24, which provided for the indictment of any officials purporting to exercise it. The right of impressing carriages, etc., but only by officers of the Navy, was revived by the statute 14 Car. 2, c. 20: and the right now exists for all branches of His Majesty's forces (see IMPRESSMENT). The right of the King to take carriages, etc., for his personal use on royal progresses was revived by the statute 1 Jac. 2, c. 10: but this revived right had been obsolete since 1688; and the statute of James was formally repealed in 1863.

See PROVISOR VICTUALIUM.

Purview. This was the old name for that part of a statute which provides or enacts; as opposed to the preamble, which recites the reason or occasion for the statute. The word is now, however, more generally used as meaning scope or policy. Hence a case was formerly said to be within the purview of an Act when it was expressly covered by the provisions of the Act: now, the same expression would rather mean that the case was impliedly covered by the Act.

The word "purview" is derived from the first word of the Norman-French *purveu est* (Latin, *provisum est*) used in the enacting part of old statutes.

Putts and Refusals. This expression is used in the statute 7 Geo. 2, c. 8, s. 1, as meaning time bargains. See STOCK JOBBING ACT.

Putura; Puture. The keepers in forests, and sometimes the bailiffs of hundreds, anciently claimed the right (known as puture) to get, without payment, provisions, etc., for themselves, their horses and their dogs from those holding land within the forest or hundred. Before the time of Edward III. this right had been commuted for a small payment (generally fourpence) from each tenant; and the statute 25 Edw. 3, st. 5, c. 7, prohibited the taking of anything (under colour of puture) except the accustomed payments.

Land subject to puture was known as *putura*.

Pyx. A box in which samples of all the coins which are being issued are kept at the Mint (q.v.) for the trial (known as the Trial of the Pyx), which is held every year for the purpose of ascertaining whether the coins have been made in accordance with the Coinage Act, 1870. The procedure is regulated by s. 12, and the Order in Council made thereunder. The trial takes place before the King's Remembrancer and a jury of six members of the Goldsmiths' Company, summoned by the officials of that company, who are known as the Prime Warden and the Wardens; there is a weighing, melting and assaying of the coins in order to ascertain whether they are of proper weight and fineness, and the verdict of the jury, which must be signed by each of them, contains various averments as to these matters.

Q

Qua. "In the capacity of," "because he is": used in such phrases as "*qua* trustee."

Quadragesima. Lent.

Quadragesima Sunday. The first Sunday in Lent.

Quadragesimals. On Mid-Lent Sunday (the third Sunday in Lent), it was anciently the custom to make certain offerings, in kind, on the high altar of the church; subsequently these offerings were commuted to money payments known as *Quadragesimalia*, *Chrismatis Denarii*, *Denarii Quadragesimales*, Easter Pence, *Letare Jerusalem*, Paschals or Paschal Rents. These offerings seem to have gone to the bishop or his suffragan. Compare PENTECOSTALS.

Quadrantata terræ. A rood of land. Compare FARDING DEAL.

Quadripartitus. See LIBER QUADRIPARTITUS.

Quæ ab initio inutilis fuit institutio, ex post facto convalescere non potest (*D.* 50, 17, 210). (That which was a useless institution from the commencement cannot be strengthened by anything subsequent.) Compare QUOD AB INITIO, ETC.

Quæ accessionum locum obtinent extinguuntur cum principales res peremptæ fuerint (2 *Pothier Ob.* 202). (Things which are incidents are extinguished when the principals are extinguished.) See ACCESSORIUM NON DUCIT, ETC.; QUUM PRINCIPALIS, ETC.

Quæ ad unum finem loquuta sunt, non debent ad alium detorqueri (4 *Rep.* 14). (Those things which are spoken for one purpose, ought not to be perverted to another.) This is a maxim which applies to all other maxims; nothing can be more misleading than a maxim taken apart from the context.

Quæ communi legi derogant strictè interpretantur (*Jenk. Cent.* 221). (Things derogating from the common law are to be interpreted in a narrow sense.)

Quæ contra rationem juris introducta sunt, non debent trahi in consequentiam (12 *Rep.* 75). (Things introduced contrary to a rule of law ought not to be drawn into a precedent.) Used by Coke, where he says, "we do find divers precedents of proclamations which are utterly against law and reason." See PROCLAMATION, ROYAL.

Quæ dubitationis tollendæ causâ inseruntur, communem legem non lædunt (*Co. Litt.* 205). (Things which are inserted for the purpose of removing doubt do not injure the common law.) Coke is here speaking of words inserted for greater clearness in a deed where the effect would be the same if the words were omitted. Compare SURPLUSAGIUM, ETC.

Quæ est eadem. Literally, "which is the same." This was formerly used in pleadings to supply the place of a traverse (q.v.) in certain actions, more especially the action of trespass. Thus in a *clausum fregit* (see CLOSE), where the declaration (q.v.) alleged the trespass to have been on November 1st, and the defendant justified in respect of November 2nd, a plea (q.v.) averring *quæ est eadem* was good if the date was immaterial, but if the date was material, then a traverse was necessary. If, however, the defendant justified in respect of the date averred, then neither a *quæ est eadem* nor a traverse was required.

Quæ in curiâ regis acta sunt rité agi præsumuntur (3 *Bulst.* 43). (Things which are done in the king's court are presumed to be done in the right way.) Compare OMNIA PRÆSUMUNTUR RITE, ETC.

Quæ in testamento ita sunt scripta, ut intelligi non possint, perinde sunt ac si scripta non essent (*D.* 50, 17, 73). (Those things which in a testament are so written that they are not capable of being understood are as if they had not been written at all.) See AMBIGUITY.

Quælibet concessio fortissimè contra donatorem interpretanda est (*Co. Litt.* 183). (Every grant is to be construed as strongly as possible against the grantor.) Compare VERBA CARTARUM.

Quælibet pœna corporalis, quamvis minima, major est qualibet pœna pecuniaria (3 *Inst.* 220). (Corporal punishment, however slight, is more efficacious than a fine.) This is merely a quotation from Bracton, lib. 3, fo. 105 a.

Quæ mala sunt inchoata in principio vix est ut bono perangantur exitu (4 *Rep.* 2). (Things bad in the commencement can scarcely be carried through to a good ending.) Cited in conjunction with QUOD AB INITIO, ETC.

Quæ non valeant singula, juncta juvant (2 *Bulst.* 132). (Words which are of no effect by themselves are effective when combined.) Cited by Dodderidge, J., where he says that certain words "being severed, shall not be actionable, yet they, being all conjoined together, are well actionable.") Compare NOSCITUR, ETC.

Quæ plura. Where an *inquisitio post mortem* (q.v.) had been held and there was reason to believe that the deceased had died seised or possessed of lands, etc., other than those disclosed at the inquest, then the escheator, etc., who held the inquest, could sue out the writ of *quæ plura* to enquire *quæ plura* (what more) the deceased had been seised or possessed of. The writ was virtually abolished by the abolition of the Court of Wards and Liveries in 1660.

Quærens non invenit plegium. See QUERENS.

Quæ servitia. See PER QUÆ SERVITIA.

Quæstum. See QUESTUM.

Quaker. The colloquial title of a member of the Society of Friends. They have never formally adopted it. But it has received statutory recognition: thus the Short Titles Act, 1896, gives the short title "The Quakers and Moravians Act, 1833," to the statute 3 & 4 Will 4, c. 49.

Quale jus. This judicial writ was framed after the enactment in 1284 of the Statute of Westminster II., c. 32. It was designed to

enforce the provisions of that statute, which were directed against the alienation of lands in mortmain (q.v.). Where an abbot or other religious person had recovered lands by a judgment in default, then the abbot, etc., had to sue out this writ in order to have it decided whether he really had a right to the lands or whether the judgment was collusive: and execution was stayed pending a decision on the point.

Qualification is a quality which makes a person eligible for an office. As a general rule, the term denotes the possession of property of a certain value. Thus every juryman for the trial of actions in the High Court must be over twenty-one and under sixty-five years of age and must either (i) be assessed to the poor rate or inhabited house duty on a value of not less than £30 in Middlesex, or £20 in any other county; or (ii) occupy a house containing not less than fifteen windows; or (iii) possess freehold or leasehold property of a certain yearly value (County Juries Act, 1825, s. 1). In the City of London the qualification is different: see the Local Government Act, 1888, s. 89. A special juror must either be a banker, merchant, or esquire, or occupy a private dwelling-house of a certain value (Juries Act, 1870, s. 6). So a director of a company is generally required to be the holder of a certain number of shares.

The statute 22 & 23 Car. 2, c. 25 (popularly known as the Qualification Act), which made certain property qualifications necessary for the killing of game, was repealed by the Game Act, 1831.

Various statutes had from time to time made certain property qualifications necessary for the office of justice of the peace. The Justices of the Peace Act, 1906, s. 5, Sch., repealed such of those enactments as were in force in 1906. The Act of 1906, s. 3, also enacted that a solicitor shall not be disqualified for the commission of the peace of any county by reason of his profession, but that neither he nor any partner of his may practise before the justices of the county.

See PROPERTY QUALIFICATION.

Qualified Fee. See FEE.

Qualified Indorsement. See INDORSE.

Qualified Property. This is the technical description of the property of a bailee in a bailment.

Quality. See ESTATE.

Quamdiu se bene gesserit. (During good behaviour.) See OFFICE; AD VITAM AUT CULPAM.

Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum (*Co. Litt.* 56). (How long reasonable time ought to be is not defined by law, but depends upon the discretion of the judges.) But where a case is being tried by a judge with a jury, the question of reasonable time is for the jury.

Quando abest provisio partis, adest provisio legis (cited 13 *C. B.* 960). (When provision of party is wanting, provision of law is there); that is to say, a point not expressly covered by contract is decided according to general rules of law.

Quando acciderint. See JUDGMENT.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud (5 *Rep.* 116). (When anything is commanded, everything by which it can be accomplished is also commanded.) And so a master employed to navigate a ship is impliedly authorised to do all things necessary for the voyage—such as the giving of bottomry bonds in case of need.

Quando aliquid prohibetur fieri, prohibetur ex directo et per obliquum (*Co. Litt.* 223). (When the doing of anything is forbidden, then the doing of it either directly or indirectly is forbidden.) And so, as Martin, B., says at 2 *H. & C.* 918, the law will not uphold anything which is "a mere device for carrying into effect that which the legislature expressly says shall not be done."

Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud (2 *Inst.* 48). (When anything is prohibited, everything also is prohibited by which the same thing is arrived at.)

Quando duo jura in una persona concurrunt, æquum est ac si essent diversis (2 *Preston Abs. Tit.* 430). (When two titles concur in one person, it is the same as if they were in different persons.)

The "*jura*" here spoken of are titles to property. Thus, what A cannot take as half-brother to B, he may take as cousin of B—if such in fact he be—and in each capacity he is dealt with by the law as a separate person.

Quando jus domini regis et subditi concurrunt jus regis præferri debet (9 *Rep.* 129). (When the titles of the king and of the subject concur, that of the king is to be preferred.)

The King cannot have a joint property with any person in one entire chattel; where the titles of the King and of a subject concur, the King takes the whole. The King's debts, in suing out execution, shall be preferred to that of every other creditor who had not obtained judgment before the King commenced his suit. So, too, Crown debts have priority in admin-

istering the assets of a company in liquidation.

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (5 *Rep.* 47). (When the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.)

A person who has a right to expose goods for sale in a public market has also a right to occupy the soil with baskets necessary and proper for containing the goods; and that as against one to whom the owner of the fee-simple of the soil has made a devise. Compare CUICUNQUE ALIQUIS, ETC.

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda (2 *Inst.* 83). (Where a law is special, but its reason general, the law is to be understood generally.) Coke applies this maxim to illustrate the practice under which the assize of novel disseisin referred to in the Statute of Merton, c. 3, might be taken, not merely before the itinerant justices there mentioned, but also before the King's Bench or the Common Pleas, or the justices of assize who had taken the place of the itinerant justices.

Quando mulier nobilis nupserit ignobili desinit esse nobilis nisi nobilitas nata fuit (4 *Rep.* 118). (When a noble woman marries a man not noble, she ceases to be noble, unless her nobility was born with her)—that is to say, unless she is a peeress in her own right.

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est (5 *Rep.* 115). (When more is done than ought to be done, then that is considered to have been done which ought to have been done.)

The act shall be void *quoad* the excess only. Thus, if a man have power to lease for ten years, and he lease for twenty, the lease for the twenty years shall in equity be good for ten years of the twenty. Compare OMNE MAJUS, ETC.

Quando res non valet ut ago, valeat quantum valere potest (*Cowp.* 600). (When anything does not operate in the way I intend, let it operate as far as it can.)

If a deed cannot operate precisely as the parties intend, the law will nevertheless give effect to their intention so far as is possible.

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum (10 *Rep.* 101). (When the words of a statute are special, but the reason is general, the statute is to be understood generally.) Another form of QUANDO LEX, ETC.

Quantity. See ESTATE.

Quantum damnificatus. (The amount of damage suffered.) The issue *quantum damnificatus* was one which the Court of Chancery down to 1858, used to have tried in a court of law when it appeared that a party was entitled to damages as well as to an injunction. The Chancery Amendment Act, 1858, empowered the Court of Chancery to itself take the verdict of a jury as to the amount: there was no such power previously.

Quantum meruit. Literally, "as much as he has earned." If a person enters into a contract to do services for another, and either the contract is put an end to before they are completed, or they are not rendered in the manner provided by the contract, the contractor is obviously not entitled to be paid his contract price, but in some cases he is entitled to be paid the actual value of his services; and if he brings an action to recover it, he is said (in the language of common law) to sue on a *quantum meruit*. Thus, where a party to a contract refuses to perform his part of it, the other has the right to rescind it, and to sue on a *quantum meruit* for the services which he had done under it previous to the rescission. See QUANTUM VALEBANT.

An action will not as a rule (but there are exceptions) lie for a *quantum meruit* if the work has been done under a special contract which remains open, that is to say, if the completion of the work is a condition precedent to payment. The claim for "extras" on a building contract is an instance of a claim on which the *quantum meruit* doctrine is available; a case in which it is not available is that of work done by an agent towards carrying through a transaction which ultimately is not carried through.

Quantum valebant. Literally, "as much as they were worth." If a person contracts to supply goods of a certain kind, and supplies goods of a different kind, and the other party does not avail himself of the right of rejecting them, the former, although he cannot claim the price payable under the contract (for it has not been performed), can claim the actual value of the goods supplied; and if he brings an action for it, he is said, in the language of common law, to sue on a *quantum valebant*.

Quarantine (or **Quarentine**) is, literally, a period of forty days. The expression was used to denote the period (whether forty days or not) which persons coming from a country or ship in which an infectious disease was prevalent were obliged to wait before they were permitted to land in England. The law on the subject is now to be found in the Public Health Act, 1896 (as amended by the Public Health Act, 1904), under which the Ministry

of Health can make regulations, not merely as regards the detention of persons on board ship, but also as regards many other matters relating to the prevention of the importation of disease. Quarantine also signifies the forty days during which a widow is entitled (under Magna Carta) to remain in her husband's dwelling-house after his death. See QUARENTINA HABENDA.

Quare clausum fregit. See TRESPASS.

Quare ejecit infra terminum. This writ was abolished by the Real Property Limitation Act, 1833, s. 36. It lay for one who had been ejected from land before the expiration of the term for which he had held, where the land was in the possession, not of the wrongdoer, but of someone claiming through the wrongdoer. The writ was well known to Bracton.

Quare impedit. This, says Coke, "is an ancient writ which lies by him who being in possession of an advowson of a church is disturbed in his presentation of it." This writ was abolished by the Common Law Procedure Act, 1860, s. 26, which provided that the ordinary writ of summons should be issued instead. If, on a living becoming vacant, two persons present clerks to the bishop, the action of *quare impedit* may be instituted, upon the ordinary writ of summons, by either of the alleged patrons, the bishop, and the other alleged patron and his clerk, being the defendants. The action of *quare impedit* also lay until 1898 against a bishop who had refused to admit on the ground of unfitness: but, under s. 3 (5) of the Benefices Act, 1898, no proceeding in the nature of *quare impedit* lies against a bishop who has refused to admit on that ground, and the remedy is by appeal to the archbishop.

See GRAND DISTRESS; NE ADMITTAS; USURPATION.

Quare incumbravit. This writ, like many others, was abolished by the Real Property Limitation Act, 1833, s. 36. It lay, in circumstances which it is unnecessary to specify in detail, against a bishop who had himself admitted to a benefice a clerk whom he was not entitled to admit.

Quare intrusit. This writ, which was impliedly abolished by the statute 12 Car. 2, c. 24 (abolishing the Court of Wards and Liveries), lay for a lord where the lord had offered a suitable marriage to his ward, who rejected it and married another, and entered into the land, so that the lord's right to the value of the marriage was not satisfied.

Quare non admisit. A writ anciently directed to a bishop who had been refused to admit a clerk to a benefice. In such a case now, the remedy will be appeal to the archbishop if the refusal is on the ground of unfitness. See QUARE IMPEDIT.

Quarentina; Quarentine. A rood of land (Leg. Hen. 1, c. 16); also the widow's "quarantine."

Quarentina habenda, De. An obsolete writ which lay for a widow to enforce her right of quarantine (q.v.).

Quarrels. Actions, whether real or personal, and all causes of actions and suits, were released by a "release of all quarrels."

Quarries. Quarries on open or unenclosed land and within fifty yards of a highway or place of public resort are nuisances unless adequately fenced (Quarry Fencing Act, 1887). See MINES.

Quart. One-fourth part of a gallon (Weights and Measures Act, 1878, s. 15).

Quarter. A measure of capacity containing eight bushels (q.v.) (Weights and Measures Act, 1878, s. 15).

Quarter-days. These are Christmas Day, Lady Day, Midsummer Day, and Michaelmas (see those titles). There are, however, some local variations: thus, in the City of Bristol the customary December quarter-day is December 21st instead of Christmas Day.

Quarter Rating. The privilege of being rated (see RATING) at one-fourth of the net annual value, which attaches to arable, meadow, or pasture land, woodlands, market gardens, nurseries, land covered with water, canals and towing paths, railways (Public Health Act, 1875, s. 211 (1) (b)), and allotments (Allotments Rating Exemption Act, 1891, s. (1)) not exceeding two acres (s. 2).

Quarter Sessions is a Court of Record held before two or more justices of the peace once in every quarter of the year for execution of the authority given them by the commission of the peace and certain statutes. Formerly their jurisdiction, in theory, extended to trying all misdemeanours and felonies, other than forgery and perjury, though in practice they sent the more serious cases to the assizes. Now, however, their jurisdiction to try cases of treason, murder, manslaughter, rape, incest, frauds by agents, and numerous other serious offences, has been taken away altogether, chiefly by the Quarter Sessions Act, 1842, so that in those cases their jurisdiction ceases as soon as the indictment has been found. See GENERAL SESSIONS.

There are over a hundred boroughs with separate courts of quarter sessions, granted under s. 103 of the Municipal Corporations Act,

1835, or under s. 162 of the Municipal Corporations Act, 1882. These sessions are popularly known as borough sessions: the borough justices cannot act as justices of any gaol delivery or quarter sessions (Act of 1882, s. 158 (1)), and the recorder is the sole judge (*ib.* s. 165 (2)).

Proceedings at quarter sessions consist (1) of the finding of bills or indictments by the grand jury (see BILL); (2) of the removal to the assizes of those indictments which the Court of Quarter Sessions has no jurisdiction to try; (3) of the trial of those indictments which it has jurisdiction to try (see TRIAL); (4) of business falling within the original jurisdiction of the sessions, chiefly in matters relating to the preservation of the peace and the punishment of rogues and vagabonds; (5) of business within the appellate jurisdiction, which includes (a) appeals from petty and special sessions in bastardy, highway, rating, removal of paupers, and licensing cases, under various statutes relating to those matters, and (b) appeals from any conviction by a Court of summary jurisdiction for any offence other than an offence to which the defendant had pleaded guilty (Criminal Justice Administration Act, 1914, s. 37 (1)). The appellate jurisdiction in bastardy is materially extended by s. 37 (2) of the Criminal Justice Administration Act, 1914.

The Assizes and Quarter Sessions Act, 1908, contains provisions under which the holding of assizes or quarter sessions and the attendance of jurors thereat can be dispensed with when there is no business to be transacted: and it also amends the law as to the dates for quarter sessions.

Quash is to discharge or set aside. Thus a conviction may be quashed if it be made without or in excess of jurisdiction.

Quasi-contract. A quasi-contract is an obligation similar to that created by contract, but not really arising by the consent of the person bound. Thus, in Roman law, if a person left his property without anyone to look after it, a stranger might undertake the care of it, and had a right of action against the owner for his expenses (*actio negotiorum gestorum*); "and this," says Justinian, "is for the sake of utility, lest the affairs of persons suddenly called away without being able to arrange for their management should be neglected, for no one would look after them if he had not a right of action for his expenses." The term quasi-contract is unknown to the English law, although the thing itself exists. Thus if, in the absence of a husband, I incur expense in burying the wife in a manner suitable to the husband's condition, though without his knowledge, I may sue him for my expenses, or, as it is said, the law will imply a promise by him to reimburse me. Again, everyone exercising an office or employment who undertakes a duty comprised in it is bound to perform it with integrity, diligence and skill, independently of any special stipulation to that effect with his contractee. Thus a common carrier is bound to carry his goods or passengers safely, and a solicitor, surgeon, engineer, &c., who undertakes a professional duty is bound to discharge it with integrity and skill, and, if he does not, he is liable for any damages caused by his default or negligence. If, however, a person be employed to do anything outside his ordinary profession or business the law implies no such general undertaking: in order to charge him with damages, a special agreement is required. The best example of a quasi-contract in English law is salvage (q.v.).

See QUASI-TORT.

The term "quasi-contract" is a modern abbreviation of the *obligatio quasi ex contractu* of the Romans.

Quasi-easement. An easement, in the proper sense of the word, can exist only in respect of two adjoining pieces of land occupied by different persons, and can impose only a negative duty on the owner of the servient tenement. Hence an obligation on the owner of land to repair the fence between his and his neighbour's land is not a true easement, but is sometimes called a quasi-easement.

Quasi-entail. A quasi-entail or quasi-estate-tail exists when an estate *pur autre vie* is limited to a person and the heirs of his body. Thus, if land is given to A and the heirs of his body during the life of B, A has a quasi-entail. A quasi-entail in possession may be barred by an ordinary deed of conveyance: if it is in remainder, the concurrence of the tenant for life is required.

Quasi-partnership. See PARTNER, II.

Quasi-possession is to a right what possession is to a thing—it is the exercise or enjoyment of the right, not necessarily the continuous exercise, but such an exercise as shows an intention to exercise it at any time when desired. When the right itself is exercised by means of possession of the thing which is the subject of the right, as in the case of ownership, the idea of quasi-possession does not arise, and hence the term is confined to those rights which merely give a limited power of using the thing, as in the case of easements and profits *à prendre*; it is, however, not much

used in English law, the word "enjoyment" (q.v.) being more frequently employed.

Quasi-tenant at Sufferance. This term has sometimes been applied to an under-lessee who continues in possession, after the termination both of his own and of his lessor's leases, without the reversioner either assenting or dissenting.

Quasi-tort, though not a recognized term of English law, may be conveniently used in those cases where a man who has not committed a tort is liable as if he had. Thus, a master is liable for wrongful acts done by his servant in the course of his employment. The ground of the liability is sometimes expressed by the rule *qui facit per alium facit per se*; but this is erroneous, that rule applying only to authorised acts: the true rule is *respondeat superior*. See QUASI-CONTRACT.

Quasi-trustee. A person who, without authority, has taken it on himself to act as a trustee.

Queck Board. See CLOSH.

Queen. This may be either:—a Queen Regnant (as in the case of Queen Victoria), who is for every purpose the same as the King; a Queen Consort (or wife of a reigning King), who has no political power whatever; and a Queen Dowager (or widow of a deceased King), who likewise has no political position.

A Queen Consort was anciently entitled to Queen Gold (q.v.). Her person and her chastity are specially protected by the Treason Act, 1351. She is not subject to, in the words of Coke, "any toll fine or amerciament." She is entitled to appoint her own attorney-general and solicitor-general: but this privilege has not been exercised since the death of Queen Victoria resulted in there being again a Queen Consort.

A Queen Dowager retains her rank in the event of her re-marriage. It is said that she retains most of the privileges of a Queen Consort: and so it may be that her income from the Civil List (q.v.) is exempt from income tax if, like a Queen Consort, she is not subject to "any toll," etc.

Queen Anne's Bounty. By the statute 26 Hen. 8, c. 3, certain duties called first fruits and tenths which had up to that time been paid by the incumbents of ecclesiastical benefices to the Pope, were made part of the revenues of the Crown. Queen Anne determined to apply them to the augmentation of the livings of the poorer clergy, and under the provisions of the statute 2 & 3 Anne, c. 20, she appointed certain persons to be a corporation to receive and apply for this purpose the first fruits and tenths, and also any gifts and benevolences given to them for the same purpose; they are called the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy. See ANNATES; TENTHS; FIRST FRUITS AND TENTHS, COURT OF; RECEIVER, ETC.

Queen Gold. This was a revenue payable to every queen consort for the duration of her marriage to the king. It consisted of the amounts payable to the king for privileges, dispensations, pardons, and similar exercises of the royal prerogative, and of an additional ten per cent. upon every such amount. It ceased to be paid after the restoration of Charles II.

Queen's Advocate; Queen's Bench; Queen's Counsel; Queen's Coroner; Queen's Evidence; Queen's Printer; Queen's Proctor; Queen's Remembrancer. See KING'S ADVOCATE; KING'S BENCH, ETC., these latter being the terms in use except when there is a queen regnant.

Queen's Prison. A debtors' prison in Southwark which was established by the Queen's Prison Act, 1842, to take the place of the Queen's Bench, Fleet, and Marshalsea Prisons (q.v.). It was abolished by the Queen's Prison Discontinuance Act, 1862, which provided for the transfer of prisoners to Whitecross Street Prison (q.v.).

Que estate. See PRESCRIPTION.

Que est le mesme. Literally, "which is the same." *Que est le mesme* were formerly words of art used as direct justification in actions of trespass, etc., of the very act complained of by the plaintiff as a wrong. Compare QUAE EST EADEM.

Quem redditum reddit was a real action by which the grantee of a rent could compel the tenants of the land out of which the rent issued to attorn to him. It was abolished by the Real Property Limitation Act, 1833, s. 36. See ATTORNMENT.

Querela. From a very early period this meant any civil proceeding in any Court. See AUDITA QUERELA and DUPLEX QUERELA.

Querela coram rege et concilio. A writ whereby one was called to justify a complaint of trespass before the King and the Council (or Curia Regis): see *Reg. Brev.* 124.

Querela frescæ fortiæ. A writ of Fresh Force (q.v.).

Querens; Querent. Anciently this was a plaintiff or complainant.

Querens non invenit plegium. (The plaintiff has not found security.) Anciently this was a return made in appropriate circumstances by a

sheriff to a writ commanding him to do such and such a thing, " Si A fecerit B securum de clamore suo prosequendo " (if A shall give B security for the prosecution of the complaint). For an instance of the use of this return see *Fitzherbert N.B.* 38.

Quest. An inquest or inquisition held upon the oaths of a jury duly impanelled. In the City of London the aldermen and citizens of every ward anciently held a " quest " during the Christmas holidays to inquire of misdemeanours and nuisances. The word now survives only in " crowner's quest " sometimes colloquially used as a provincial equivalent for " coroner's inquest." Compare QUESTMAN.

Questions of Law arising in an action may, under R. S. C., Ord. 34, r. 1, be stated in the form of a special case (q.v.) for the opinion of the Court, or in such other manner as the Court may deem expedient. See further as to questions of law, FACT.

See CASE STATED; COURT FOR CROWN CASES RESERVED.

Questman. Two persons were anciently elected by the parishioners of every parish as questmen, whose duty it was to make " quest " (q.v.) as to ecclesiastical offences and to " present " the offenders to the ecclesiastical Courts. By the end of the sixteenth century these duties had devolved upon the churchwardens, who were sometimes called questmen.

Questum. See HEREDITAS.

Questus est nobis. The statute 13 Edw. 1, c. 24, provided that the writ *questus est nobis* should lie against the person to whom had been sold a house, wall, etc., which had been erected so as to cause a nuisance.

Quia Emptores is the name usually given to the statute 18 Edw. 1, c. 1, passed in the third " notable " parliament holden at Westminster, and therefore also called the Statute of Westminster III. After reciting that purchasers of lands (*quia emptores terrarum*) from freeholders of great men and other lords hold their lands of the freeholders and not of the superior lords, whereby the latter lose the feudal fruits of tenure, it enacts that every freeman shall be at liberty to sell his lands, but that the purchaser shall hold them of the chief lord, so as to take the place of the vendor. The statute, therefore, abolished subinfeudation (q.v.), and thus made the future creation of seignories, manors, honours, etc., impossible. It also first authorised conveyances of feudal lands, which had hitherto been considered inoperative as against the lord.

Quia forma non observata, infertur adnullatio actus (12 *Rep.* 7). (Because the prescribed procedure has not been observed, the proceedings are void.) This was said in connection with an alleged irregularity in the procedure of the ecclesiastical Courts.

Quia improvide. A *supersedeas* (q.v.) which anciently was granted in the case of a clerk of the Chancery who had, in contravention of the privilege of that Court, been sued in the Common Pleas. The term *quia improvide* was also used as meaning a *supersedeas* generally in the case of writs erroneously sued out.

Qui aliquid statuerit parte inaudita altera, æquum licet statuerit, haud æquus fuerit (6 *Rep.* 52). (He who shall decide anything, one party being unheard, though he shall decide rightly, will not be just.) Compare AUDI, ETC.

Quia profecturus. The writ of protection (q.v.) used to contain a clause commencing with the words *quia profecturus est* (because he is about to set out). This was known as the *quia profecturus*: see the statute 13 Rich. 2, c. 16.

Quia timet. See BILL OF COMPLAINT; BILL QUIA TIMET.

Quibus sur disseisin, De. " A writ of *De quibus*, which is brought in the place of an assize, is where a man is disseised of any lands, tenements or rents, whereof he hath an estate in fee: then he may sue that writ." (*Fitzherbert N. B.* 191.)

Quick Successions. See ESTATE DUTY.

Quicquid demonstratæ rei additur satis demonstratæ frustra est (*D.* 33, 4, 1). (Whatever is added to describe anything already sufficiently described, is without effect)—whether the redundancy is accurate (see SURPLUSAGIUM, ETC.) or inaccurate (see FALSA DEMONSTRATIO, ETC.)

Quicquid necessitas cogit, defendit (*Hale, P. C.* 54). (When anything is done of necessity, then necessity can be pleaded as a defence.) This is one of a group of maxims to the same effect as NECESSITAS EST, ETC. (q.v.).

Quicquid plantatur solo, solo cedit (*Went. Off. of Exec.* 58). (Whatever is affixed to the soil belongs to the soil.) But see ÆDIFICATIO, ETC.

Quicquid solvitur, solvitur secundum modum solventis (2 *Vern.* 606); **quicquid recipitur, recipitur secundum modum recipientis** (*Halk.* p. 149). (Whatever is paid, is paid according to the intention or manner of the party paying; whatever is received, is received according to the intention or manner of the party receiving.) As to the meaning of this maxim, see APPROPRIATION.

Qui cum alio contrahit, vel est, vel debet

esse, non ignarus conditionis ejus (*D.* 50, 17, 19). (He who contracts with another, either is, or ought to be, acquainted with the condition of that person.)

Quid juris clamat was a real action by which the grantee of a reversion or remainder expectant on an estate for life could compel the tenant for life to attorn to him. It was abolished by the Real Property Limitation Act, 1833, s. 36. See ATTORNMENT.

Quid pro quo ("something for something") is the old term for consideration (q.v.). "In every contract," says Coke, "there must be *quid pro quo*." (*Co. Litt.* 47B).

Quietare. To quit, discharge or save harmless: often found in deeds of dates during the seventeenth century and earlier.

Quiete clamare. To quit claim, that is to say, to renounce all claim to: used in Bracton, *lib.* 5.

Quiet Enjoyment. See COVENANT; LEASE.

Quietus was a discharge granted by the Crown or its officer to a person indebted to the Crown, *e.g.*, an accountant, and more especially a sheriff. It was a defence to a writ of extent, and might be entered on the register of judgments in discharge of an execution already issued. It seems to have been originally a writ addressed to the Barons of the Exchequer, directing that the debtor should be discharged (*quietus sit*) of all claims. Afterwards it was the term made use of by the Clerk of the Pipe in the certificate *quietus est* (he is quit) which he gave to a sheriff when the sheriff had paid any balance due after the sheriff's bill of cravings (q.v.) had been allowed in whole or in part.

The term *quietus* was in use down to a recent period (see the Judgments Act, 1839, s. 9, repealed by the Land Charges Act, 1900, s. 5, Sch.), but it is now obsolete.

See SURPLUSAGE.

Quietus redditus. Quit-rent: see RENT.

Qui ex damnato coitu nascuntur inter liberos non computentur (*Co. Litt.* 8*a*). (Those who are born from unlawful intercourse are not counted among the children.) See BASTARD.

Qui facit per alium facit per se (*Co. Litt.* 258). (He who acts through another is deemed to act in person.) This means that a principal is liable for the acts of his agent within the scope of his authority. See AGENT; MASTER AND SERVANT; RESPONDEAT SUPERIOR.

Qui fraudem agit, frustra agit (2 *Rolle.* 17). (He who works a fraud is labouring in vain.) He can thereby acquire no right of action. Compare EX DOLO, ETC.

Qui hæret in literâ hæret in cortice (*Co. Litt.* 283). (He who sticks in the letter sticks in the bark)—that is to say, he who considers merely the letter of an instrument cannot comprehend its meaning; he never gets at its true inwardness. The law on the other hand, concerns itself with the substance, as distinguished from the form, of any matter. Compare FALSA DEMONSTRATIO, ETC.

Qui in jus dominiumve alterius succedit jure ejus uti debet (*D.* 50, 17, 177). (He who succeeds to the right or property of another ought to be clothed with his right.) If he takes over the rights he does not escape the liabilities: see ASSIGNATUS, ETC.

Qui jure suo utitur neminem lædit (*D.* 50, 17, 151). (He who exercises his legal right inflicts upon no one any injury [for which an action lies].) For here there is *damnum sine injuria* (q.v.).

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse quia parere necesse est (10 *Rep.* 76). (He who does anything by command of a judge will not be supposed to have acted from an improper motive; because there is an obligation to obey.) The maxim is cited by Coke in support of the rule that no action will lie against anyone executing the order of a Court, given in a matter within its jurisdiction, even though it be given erroneously or irregularly. Compare JUDICIUM A NON, ETC.

Quilibet potest renunciare juri pro se introducto (2 *Inst.* 183). (Every man is entitled to renounce a right introduced in his favour.) And so a defendant may waive his right to plead the Statute of Limitations where a debt is barred by that enactment. But there are exceptions to the principle embodied in this maxim: see OMNES LICENTIAM, ETC.

Qui non habet in ære, luet in corpore (2 *Inst.* 173). (Let him who has not the money, pay with his person.) Quoted by Coke in connection with the provision contained in the Statute of Westminster I., c. 9, for the imprisonment (in default of payment of a penalty) of officials who had failed to apprehend felons; the familiar "ten shillings or seven days" of Courts of summary jurisdiction, is a modern instance.

Qui non improbat, approbat (3 *Inst.* 27). (He who does not disapprove, approves) provided, of course, that he would naturally express disapproval unless he in fact approves.

Qui non obstat quod obstare potest facere videtur (2 *Inst.* 146). (He who does not prevent what he can prevent is regarded as doing the thing.) See IDEM EST FACERE, ETC.

Qui non prohibet quod prohibere potest

assentire videtur (2 *Inst.* 305). (He is deemed to consent who does not prohibit a thing which he has power to forbid.)

Quinquennial List. See VALUATION LIST.

Quinsisme. This word, of which there are many forms, meant a tax of one fifteenth part or *quinzième*: see FIFTEENTHS. See the statute 25 Edw. 3, st. 7.

Quint-exact; Quinto exactus. "Called for the fifth time," literally; used as meaning the fifth or last call in the old process of outlawry (q.v.).

Qui omne dicit nihil excludit (2 *Inst.* 81). (He who says "all" excludes nothing.) Cited in connection with the statement that a provision as to *omnes viduae* in the Statute of Merton related to every tenant in dower whether she took under one or the other of the five kinds of dower known to the law: and cited also in 11 *Rep.* at 29*b* as showing that, where it was provided that all penalties went to the Crown, then no one else got any part of them. See GENERALE TANTUM, ETC.

Qui peccat ebrius, luat sobrius (*Cary*, 133). (Let him who sins when drunk, be punished when sober.) Said of one who while drunk had slandered his neighbour. See DRUNKENNESS as to how far that condition is a defence in criminal matters.

Qui per alium facit, per seipsum facere videtur (*Co. Litt.* 258). (He who does anything by another is deemed to have done it himself.) See QUI FACIT, ETC.

Qui prior est tempore potior est jure (*Co. Litt.* 14). (He who is first in time has the strongest claim in law.) The principle embodied in this maxim governs the law as to lost property, wreck, derelicts, and waifs. Compare MELIOR EST CONDITIO, ETC.

Qui rationem in omnibus quærunt rationem subvertunt (2 *Rep.* 75). (They who search for reason in all things subvert reason.) Compare CONTRA NEGANTEM, ETC.; NON OMNIUM, ETC.; PRINCIPIORUM, ETC.

Qui sentit commodum sentire debet et onus; et e contra (1 *Rep.* 99). (He who enjoys the benefit ought also to bear the burden; and *vice versa*.) This rule applies precisely in the case of a covenant running with the land and in the case of a contract which is made on behalf of or is assigned to another.

Qui tacet consentire videtur (*Jenk. Cent.* 32). (He who is silent is deemed to consent), provided that the circumstances are such that it would have been natural for him to express dissent unless he actually consents. Compare QUI NON IMPROBAT, ETC.

Qui tam Action. See PENAL ACTION.

Quit Claim "is," says the *Termes de la Ley*, "a release or acquitting of a man for any action that he [the releasor] hath or might have against him." "Fleta," says Coke, "calleth it *charta de quietâ clamantiâ*." The expression "quit claim" is used in old-fashioned releases as an operative word equivalent to "release." See QUIETE CLAMARE.

Quit Rent. See RENT.

Quittance. An acquittance (q.v.).

Qui vult decipi decipiatur (1 *De G. M. & G.* 687, 710). (If a man wants to be deceived, then let him be deceived.) That is to say, if a man enters into an agreement with express knowledge of the falsehood of representations upon the faith of which the agreement is made, he cannot afterwards be heard to plead such false representations; but the case is otherwise if he has only the means of knowledge, as distinguished from express knowledge, and has negligently failed to avail himself of such means.

Quoad. "Regarding," "as to": generally in the phrase *quoad hoc* (regarding this).

Quod ab initio non valet, in tractu temporis non convalescit (4 *Rep.* 2). (That which is bad from the beginning does not improve by length of time.) Cited in the *Case of Tanistry* (*Dav.* 32), as showing that where a custom was bad at its inception, it could never become good through lapse of time.

Quod ædificatur in areâ legatâ cedit legato. (That which is built on ground that is devised passes to the devisee.) The general rule is that the devisee is entitled to everything which is affixed to the land. See FIXTURES; compare QUICQUID PLANTATUR, ETC.

Quod approbo non reprobo. (What I approbate I do not reprobate: that is to say, I cannot blow hot and cold.) And so where a condition is annexed to a bequest the legatee cannot accept the bequest and reject the condition. Compare QUI SENTIT, ETC.

Quod clerici beneficiati de cancellaria. A writ which anciently lay for a clerk of the Chancery to exempt him from contributions in respect of the proctors (q.v.) of the clergy.

Quod clerici non eligantur in officio. A writ under which a clerk could obtain exemption from serving in some office for which he was eligible by reason of lands which he held.

Quod computet. In the ancient action of accompt, one of the steps was a judgment of *quod computet*, by which auditors, or persons to take the account, were appointed. When the account was completed, there was a final

judgment for the amount found due. See ACCOUNT, ACTION OF.

Quod constat curiæ, opere testium non indiget (2 *Inst.* 662). (What is well known to the Court needs not the help of witnesses.) Coke is speaking of propositions of law.

Quod contra legem fit, pro infecto habetur (*Grounds of Law*, 405). (What is done contrary to law is deemed not to have been done at all—that is to say, it is a nullity.) Compare QUOD AB, ETC.

Quod contra rationem juris receptum, non est producendum ad consequentias (*D.* 50, 17, 141). (That which is received against the reason of the law is not to be advanced to a precedent.) The corresponding maxim of our law is QUÆ CONTRA, ETC.

Quod cum. "For that whereas": formerly used in pleadings and indictments

Quodcunque aliquis ob tutelam corporis sui fecerit, jure id fecisse videtur (2 *Inst.* 590). (Whatsoever anyone shall do in defence of his person, that he is considered to have done legally.) But, continues Coke, there must be "*inevitabilis necessitas*," as where a prisoner breaks out of his prison in order to save his life when it has been set on fire, otherwise than by his privity.

Quod dubitas ne feceris (*Hale P. C.* 300). (Do nothing about which you feel doubtful.)

Quod ei deforceat was a writ or action which lay for the recovery of land where a tenant for life, in tail, or the like, had lost the right of possession through his default or non-appearance in a possessory action. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Quod est inconveniens, aut contra rationem, non permissum est in lege (*Co. Litt.* 178). (What is inconvenient, or contrary to reason, is not permitted in law.) Compare NIHIL QUOD EST INCONVENIENS, ETC.

Quod fieri debet facile præsumitur (*Hale Max.* 153). (What ought to be done is easily presumed [to have been done].) Compare OMNIA PRÆSUMUNTUR RITE, ETC.

Quod fieri non debet factum valet. (What ought not to be done is valid if it has been done.) This very sweeping statement is, as a proposition of general application, erroneous and dangerous. It is safer to refer to the *dictum* (5 *Rep.* 38), "*fieri non debuit sed factum valeat*" (it ought not to have been done, but, since it has been done, it will be regarded as valid), which was acted on at L. R. 4 Q. B. 85, in a case where the Court declined to go into the question of the legality of payments made to special constables, who had been irregularly appointed and where the payments had not been regularly sanctioned.

Quod in minori valet valebit in majori; et quod in majori non valet nec valebit in minori (*Co. Litt.* 260). (What avails in the lesser will avail in the greater; and what does not avail in the greater will not avail in the lesser.) Compare ARGUMENTUM A MINORE, ETC.; OMNE MAJUS, ETC.

Quod meum est sine facto meo vel defectu meo amitti vel in alium transferri non potest (*Prest. Abs.* 147). Practically the same as QUOD NOSTRUM, ETC. (q.v.).

Quod necessarie intelligitur id non deest (1 *Bulst.* 71). (There is no omission of a thing which is necessarily understood)—for the law impliedly inserts it.

Quod necessarium est, est licitum (*Jenk. Cent.* 85). (Anything which is necessary is also lawful.) See NECESSITAS, ETC.

Quod non apparet non est (2 *Inst.* 479). (That which does not appear does not exist); that is to say, the Court knows nothing of anything except what is proved in the case Compare DE NON APPARENTIBUS, ETC.; INCERTA PRO, ETC.

Quod non habet principium non habet finem (*Co. Litt.* 345). (That which has not a beginning has not an end: which is as much as to say that no structure can exist without a foundation.) Compare DEBILE, ETC.

Quod non legitur non creditur (4 *Inst.* 304). (What is not read is not believed.) This maxim may very well be applied to "an unreported decision of Mr. Justice ——," occasionally cited by counsel when in difficulties.

Quod nostrum est, sine facto sive defectu nostro, amitti seu in alium transferri non potest (8 *Rep.* 92). (That which is ours cannot be lost or transferred to another without our own act, or our own fault): except, of course, by force of a statute.

Quod nullius est, est domini regis (*Fleta*, l. 3). (That which is the property of nobody, belongs to our lord the king.) Whenever the owner or person actually seised of land dies intestate and without heir, the law vests the ownership of such land either in the Crown, or in the subordinate lord of the fee, by escheat. The Crown is entitled to the undisposed-of personal estate of any person who happens to die without next-of-kin.

Quod nullius est id ratione naturali occupanti conceditur (*D.* 41, 1, 3). (That which is no one's is granted to the occupant by natural right.) But nowadays the occupant of land in this country has, as such, no title

thereto, except such as he may acquire under the Statutes of Limitation. See, however, POTIOR EST CONDITIO POSSIDENTIS.

Quod per me non possum, nec per alium (4 *Rep.* 24). (What I cannot do in person, I cannot do by proxy.) Compare NEMO POTEST PLUS, ETC.

Quod permittat. Formerly this was a writ which lay against one who built a house, wall, etc., which was a nuisance to his neighbour's land. It was also a writ which lay for the heir of one disseised of common of pasture. All writs of *quod permittat* were abolished by s. 36 of the Real Property Limitation Act, 1833.

Quod persona nec prebendarii. A writ which formerly lay to exempt ecclesiastical persons from distress for FIFTEENTHS (q.v.).

Quod prius est verius; et quod prius est tempore potius est jure (*Co. Litt.* 347). (What is first is truer, and what is first in time is better in law.) Coke quotes this in support of his statement "that the law preferreth a sure and constant right, though it be little, before a great estate by wrong and defeasible."

Quod remedio destituitur ipsâ re valet si culpa absit (*Bac. Max. Reg.* 9). (That which is without remedy avails of itself if there be no fault in the party seeking to enforce it.) "The benignity of the law is such," says Bacon, "that, when, to preserve the principles and grounds of law, it deprives a man of his remedy without his own fault, it will rather put him in a better degree and condition than a worse; for if it disable him to pursue his action, or to make his claim, sometimes it will give him the thing itself by operation of law without any act of his own; sometimes it will give him a more beneficial remedy." The maxim applies in the case of retainer—that is, where a creditor is made executor or administrator to his debtor—for he cannot sue himself. See NEMO AGIT, ETC.

Quod semel aut bis existit prætereunt legislatores (*D.* 1, 3, 6). (Legislators pass over that which happens only once or twice.) Compare AD EA, ETC.

Quod semel meum est amplius meum esse non potest (*Co. Litt.* 49*b*). (What is once mine cannot be more fully mine.) Coke cites this maxim as illustrating the old law that livery of seisin could not be made to one in actual possession of lands.

Quod semel placuit in electione, amplius displicere non potest (*Co. Litt.* 146). (Where choice is once made it cannot be altered.) Coke cites this maxim in support of the old law that, where a rentcharge was in arrear, the grantee of the charge might either sue out the writ of annuity against the grantor, or distrain the lands; but that if the grantee took the latter course and in an action of replevin (q.v.) made avowry, the action of annuity was thereby barred. The maxim is nowadays quoted in support of the rule that, where a contract is induced by fraud, the person defrauded may within a reasonable time elect either to treat the contract as valid or to rescind it, and that he must abide by such election as he makes.

Compare ELECTIO SEMEL, ETC.

Quod subintelligitur non deest (*Ld. Raym.* 832). (What is understood is not lacking.) This is practically the same as QUOD NECESSARIE, ETC.

Quod vanum et inutile est, lex non requirit (*Co. Litt.* 319). (The law requires not what is vain and useless.) Practically the same as LEX NEMINEM COGIT AD, ETC.; LEX NON COGIT, ETC. See LEX EST RATIO, ETC.

Quoits. See CLOSH.

Quo jure. A species of writ of right. It compelled claimants to common in the land of another to show their title. Abolished by the Real Property Limitation Act, 1833, s. 36.

Quo ligatur, eo dissolvitur (2 *Rolle*, 21). (Whatsoever binds can also release.) Compare EODEM LIGAMINE, ETC.

Quo minus. Literally, "by which the less." These were the initial words—and the short title—of the writ by means of which (see FICTION) the Court of Exchequer obtained its extended jurisdiction. The writ was impliedly abolished by the Uniformity of Process Act, 2 & 3 Will 4, c. 39, s. 1, which substituted the modern writ of summons in all personal actions in all the common law Courts.

Quomodo quid constituitur eodem modo dissolvitur (*Jenk. Cent.* 74). (In the same manner by which anything is constituted, so also is it dissolved.) This is from the *Doctor and Student* (q.v.), 2 *Dial.* Compare QUO LIGATUR, ETC.

Quorum. When a committee, board of directors, meeting of shareholders, or other body of persons, cannot act unless a certain number at least of them are present, that number is called a quorum. Thus, a first meeting of creditors in bankruptcy cannot act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless a quorum of three creditors (or all the creditors if the number be less than three) are present (Bankruptcy Act, 1914, s. 13, Sch. I. (24)).

The expression *quorum* is derived from the

use of the word in the form of commission (q.v.) of the peace, which was issued up to 1878. The justices "*quorum aliquem vestrum A. B. C. D. unum esse volumus*" were known as "justices of the quorum" until such time as every justice was named as of the *quorum*, so as to put all on the same footing.

Quorum nomina. A form of writ framed in the fifteenth century for the purpose of enabling accountants to the king to obtain their *quietus* (q.v.) at less expense than had previously been necessary.

Quotiens dubia interpretatio libertatis est secundum libertatem respondendum est (*D.* 50, 17, 20). (Whenever it is possible to decide either for liberty or against it, then the decision in favour of liberty should be given.)

Quotiens idem sermo duas sententias exprimit: ea potissimum excipiatur, quæ rei generandæ aptior est (*D.* 50, 17, 67). (Whenever the same language is capable of two meanings, that is to be taken which is the better fitted for effecting the proposed end.)

Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba expressa fienda est (*Co. Litt.* 147). (When in the words there is no ambiguity, then no interpretation contrary to the actual words is to be adopted.) Coke is speaking of deeds. See AMBIGUITY; compare A VERBIS, ETC.; MALEDICTA, ETC.

Quousque. See PROHIBITION; SEIZURE.

Quo warranto. The writ of *quo warranto* is a high prerogative writ by the Crown against one who claims or usurps any office, franchise or liberty, to inquire "by what authority" he supports his claim. It lies also in cases of non-user, or mis-user, of a franchise, or where any public trust is executed without authority, though it may be no usurpation of a franchise of the Crown. The prerogative writ of *quo warranto*, however, has long fallen into disuse, having been supplanted by what is called an "information in the nature of a writ of *quo warranto*," where in the process is speedier, and the judgment not so inconveniently decisive, as on the ancient writ: it is now the usual remedy in the case of corporation disputes between private persons, without the intervention of the prerogative, by virtue of the Municipal Offices Act, 1710 (9 Ann. c. 20), s. 4, which permits an information in the nature of a *quo warranto* to be brought with leave of the Court, at the relation of any person desiring to prosecute the same (who is then styled the relator) against any person usurping, intruding into, or unlawfully holding any franchise or office in any city, borough or town corporate.

A private relator can only challenge the right of an individual to act as a member of a corporation; the right of a corporation as an aggregate to act, can be challenged only by the Attorney-General. Such application as a private relator can make must be made within twelve months after the alleged disqualification arose (Municipal Corporations Act, 1882, s. 225; Local Government Act, 1888, s. 75).

Where statutory provision is made for testing, by way of election petition, the validity of an election to any municipal office, then information in the nature of a *quo warranto* will not lie (Municipal Elections Act, 1882, s. 87; Local Government Act, 1894, s. 48).

A proposed relator cannot appear in person; any application relating to *quo warranto* must be made by counsel.

The statute 18 Edw. 1 contains two statutes each known as the *Statutum de Quo Warranto*.

Quum principalis causa non consistit, ne ea quidem quæ sequuntur locum habent (*D.* 50, 17, 129). (When the principal cause does not hold its ground, then the things which arise thereout have no place.) Compare ACCESSORIUM NON DUCIT, ETC.; QUÆ ACCESSIONUM, ETC.

R

"R." See BRANDING.

Rabbits. Trespass in the daytime in pursuit of rabbits is punishable summarily under ss. 30-32 of the Game Act, 1831 (which terms rabbits "coneys"); so also, under the Night Poaching Act, 1828, s. 1, is the unlawful taking of them by night (q.v.); and unlawful entry by three or more armed persons at night, for the purpose of taking them, is punishable on indictment under s. 9 of the last-mentioned Act. Sections 1, 9 of the Act of 1828 apply to game (q.v.) as well as to rabbits.

Under the Forestry Act, 1919, s. 4, the Forestry Commissioners are empowered to cause entry to be made upon any lands for the purpose of destroying "rabbits, hares or vermin" which destroy trees or tree plants. Rabbits are not vermin under any statute or otherwise. See VERMIN.

See AGRICULTURAL HOLDINGS ACTS; ANIMALS, LIABILITY FOR; GAME; GROUND GAME.

Rabies. Canine madness. This is one of the diseases for the prevention of which orders may be made pursuant to the statutes mentioned under ANIMALS, DISEASES OF.

Racecourse. Within ten miles of Charing Cross, no race can take place between horses,

nor can horses run against time, except upon a racecourse licensed by the County Council (Racecourses Licensing Act, 1879; Local Government Act, 1888, s. 3 (v)).

Racing Tips. Neither the giving, nor the publication of advertisements offering to give racing tips (or prophecies as to the winning of horse-races) is illegal.

Rackrent. See RENT.

Radknight; Radman. A Rodknight (q.v.).

Raffle. A sale of some chattel by way of a lottery (q.v.).

Rageman, Statute of. A statute under which justices were appointed to hear and determine complaints which had arisen throughout the kingdom during the twenty-five years preceding the Michaelmas of that year. These justices were sometimes described as *juratores de rageman*. The commission of Trailbaston (q.v.) dated from this statute. It is printed as 4 Edw. 1 in the *Statutes of the Realm* and as of uncertain date in the *Statutes at Large*, Vol. 9, App., p. 25.

Rag Flock. The Rag Flock Act, 1911, prohibits the sale and the possession for sale or use in upholstering or for bedding, etc., of flock [the substance produced by tearing rags into shreds] made from any rags which do not conform to the standard of cleanliness which is prescribed pursuant to the Act.

Ragged School. The Sunday and Ragged Schools (Exemption from Rating) Act, 1869, provides (s. 1) that any rating authority may exempt from any rate any building used exclusively as a Sunday School or a Ragged School. The Act (s. 2) defines a Sunday School as "any school used for giving religious instruction to children and young persons on Sundays and on weekdays for the holding of classes and meetings in furtherance of the same object and without pecuniary profit being derived therefrom": it also gives a definition of "ragged schools" which is omitted in view of the fact that the establishment of free education by the State has made such schools obsolete.

Ragler; Raglor. The sheriff or constable or other chief officer of a Welsh commote (q.v.).

Ragman = Rageman (q.v.).

Railway. Railways in England are generally constructed under private Acts of Parliament, which confer the power of compulsorily purchasing the lands required for the line. A railway Act also almost invariably incorporates the Clauses Acts (q.v.) as amended by subsequent Acts. Railways are further subject to numerous Acts of Parliament, the chief of which are the many Railway Regulation Acts passed between 1840 and 1898, the Railway and Canal Traffic Acts, 1854 to 1894, and the Railways Act, 1921; the last-mentioned Act has provided for the reorganisation of the entire railway system of England, Scotland and Wales. The provisions of some of these Acts are enforced by the Ministry of Transport and the Board of Trade, others by the Railway and Canal Commissioners, and the Railway Rates Tribunal (q.v.).

As to how far a railway company is a carrier, see CARRIER.

The Railways (Electrical Power) Act, 1903, provides facilities for the electrification of what have hitherto been steam railways.

See LIGHT RAILWAYS; CHEAP TRAINS.

Railway Commission. This was a body of three commissioners appointed under the Regulation of Railways Act, 1873, principally to enforce the provisions of the Railway and Canal Traffic Act, 1854, by compelling railway and canal companies to give reasonable facilities for traffic, to abstain from giving unreasonable preference to any company or person, and to forward through traffic at through rates. They also had the supervision of working agreements between companies. The statutory authority for the existence of the commission expired on 31st December, 1882, as from which date the Railway and Canal Commission (q.v.) was in operation and replaced it.

Railway and Canal Commission. This is a Court established by the Railway and Canal Traffic Act, 1888 (s. 1). It consists of two non-judicial commissioners (one of them a person experienced in railway management) with salaries of £3,000 a year each, who are appointed on the recommendation of the President of the Board of Trade, and three *ex-officio* commissioners, consisting of an English judge nominated by the Lord Chancellor, a Scotch judge nominated by the Lord President of the Court of Session, and an Irish judge nominated formerly by the Lord Chancellor of Ireland (ss. 3, 4), but now possibly by the Lord Chief Justice of Northern Ireland. The *ex-officio* commissioners hold office for five years; and they act respectively in England, Scotland and Northern Ireland (s. 4). The commission deals with all such matters as were within the jurisdiction of the Railway Commission (q.v.), except in so far as those matters have been transferred to the Railway Rates Tribunal (q.v.); and it has jurisdiction not merely as regards matters directly relating to railways and canals but also as regards matters such as the construc-

tion of telegraphs and the water supply of the metropolis.

Railway Passenger Duty. A duty at the rate of 5 per cent. upon passenger fares imposed (with certain exceptions—see CHEAP TRAINS) by the Railway Passenger Duty Act, 1842.

Railway Rates Tribunal. The Railways Act, 1921, s. 20, provided for the establishment of a Court styled the Railway Rates Tribunal (which—see s. 84—is not concerned with Ireland), consisting of three permanent members of whom "one shall be a person of experience in commercial affairs, one a person experienced in railway business, and one, who shall be the president, shall be an experienced lawyer." Our law know a barrister: it knows a solicitor; but it knows nothing whatever of a "lawyer." If, as is presumably the case, it was intended that both barristers and solicitors should be eligible for the position of president, it is unfortunate that the statute does not say so in words known to the law. It is provided (s. 27) that this new tribunal shall, as from "the appointed day (see s. 31), exercise all the functions and powers of the Railway and Canal Commission which, under various sections of the Act, are made exercisable by the tribunal.

Railways Amalgamation Tribunal. The Railways Act, 1921, s. 9, established a temporary tribunal, styled the Railways Amalgamation Tribunal, to deal with schemes of amalgamation and absorption of railways in connection with the re-organisation to be effected under the Act.

Ram Alley. See PRIVILEGED PLACES.

Ranger. Anciently this was an officer of the forest, appointed by royal letters patent. He enquired about and prosecuted for trespass at the forest court and enforced the forest laws generally. Now the term merely means a keeper of a park, etc.

Rank. A claim to a prescriptive payment, such as a *modus*, is said to be rank when it is excessive, and therefore void. Thus if a *modus* set up is so large that it exceeds what would have been, in the time of Richard I., the value of the tithes in lieu of which it is claimed, the *modus* is rank and destroys itself.

Ransom. Anciently those who held by knight's tenure were under obligation to ransom, or pay money for the release of, their lord when he was captured in war.

Under the Naval Prize Act, 1864, s. 45, the King may by Order in Council prohibit, allow, or regulate the ransoming of ships or goods captured by an enemy. Nothing was heard of ransom during the war of 1914-1918.

Rape. In civil law, a rape is a division of the county of Sussex. The rapes are Chichester, Arundel, Bramber, Lewes, Pevensey and Hastings: they appear to have been military governments in early Norman times.

Rape. In criminal law, rape is the act of having carnal knowledge of a woman against her will or without her conscious permission, or where her permission has been extorted by force or fear of immediate bodily harm. Rape is a felony, punishable with penal servitude for life (Offences against the Person Act, 1861, s. 48). Connection with a married woman by personation of her husband is rape (Criminal Law Amendment Act, 1885, s. 4). Upon an indictment for rape the jury may convict for indecent assault (*ib.*, s. 9). See AGE; CORROBORATION; INDECENT ASSAULT.

Rape of the Forest. Anciently this meant trespass, with violence, on the forest.

Rapid Successions. See ESTATE DUTY.

Rapine. Larceny with violence; robbery. The word occurs in the title ("An Act for the Prevention of Theft and Rapine upon the Northern Borders of England") of the statute 14 Car. 2, c. 22; but neither in that Act nor elsewhere is it used as a legal description of an offence.

Raptu heredis, De. The ancient writ subsequently known as the writ of RAVISHMENT DE GARD (q.v.).

Rasure. An obsolete form of erasure (q.v.): the act of erasing.

Rate; Rateable. A rate is a sum assessed or made payable by a body having local jurisdiction over the district in which the person on whom the rate is assessed dwells or has property. (See TAXATION.) There are also rates—such as water rates, charged by ordinary water companies—which are modes of charging for the sale of commodities, and therefore do not fall within the ordinary definition of rates. Rates are almost always, if not invariably, assessed in respect of the enjoyment or occupation of real property in proportion to its value (*pro rata*, whence the term "rate"); and when a person has such an occupation of property as to be liable to payment of rates, his occupation is said to be rateable. The oldest rate appears to be that imposed for the relief of the poor, and the principles on which it is assessed and levied have been followed (with certain modifications) in the case of other rates. Those principles may be shortly stated as follows:—It is only the beneficial occupation which is rateable, and therefore, in arriving at the value of it, repairs, insurance and other

necessary outgoings are allowed to be deducted. For the same reason unoccupied houses (*e.g.*, a house in the custody of a caretaker) and unfinished buildings are not rateable. On the other hand, the fact that the occupation of property is in effect unprofitable, because the occupier has a heavy rent or other outgoings to bear, or because the income arising from the occupation is devoted to charitable or public purposes, does not affect his liability to be rated.

See the Parochial Assessment Act, 1836, s. 1, which directs the rateable value of hereditaments rated for the relief of the poor to be calculated upon an estimate of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain them in a state to command such rent. Special provisions as to rating the owners instead of the occupiers of property in certain cases, and as to rating unoccupied property, are contained in the Public Health Act, 1875, s. 211. As to the rating of woods, plantations, mines, and sporting rights, see the Rating Act, 1874.

The principal kinds of rates are: (i) borough rates made by a borough council under ss. 144-9 of the Municipal Corporations Act, 1882; there are also special rates levied under s. 197 of the same Act in some boroughs, *e.g.*, watch rates for defraying police expenses; (ii) county rates, assessed by the county councils for the respective counties of England, under s. 68 of the Local Government Act, 1888; (iii) county police rates, levied by county councils under the County Police Act, 1840, s. 3, and the Local Government Act, 1888, ss. 3 (*i*), 68 (5); (iv) poor rates, as to which see GUARDIANS OF THE POOR; OVERSEERS; POOR LAWS; (v) highway rates, levied in urban districts under the Public Health Act, 1875, s. 216 (3), for the repair of highways (q.v.); (vi) rates levied by urban authorities, of which the chief are—(*a*) the general district rate, leviable to defray the ordinary expenses of an urban authority in the execution of the Public Health Acts; (*b*) private improvement rates, levied under the Public Health Act, 1875, s. 213, on the occupiers of particular premises in respect of works executed by an urban authority for the benefit of such premises, or by a rural authority in the like circumstances under s. 232 of the same Act; (vii) rates which the metropolitan borough councils (who are now charged with the execution of the Metropolis Management Acts, 1855 to 1893), are authorised to levy to defray their expenses, namely, a sewers rate, a lighting rate, and a general rate (Metropolis Management Act, 1855, s. 158 *et seq.*); (viii.) a consolidated rate which the London County Council is authorised to levy, under the Metropolitan Board of Works, 1869, to defray their expenses in the execution of the Metropolis Management Acts, and for paying interest on and redeeming the moneys borrowed by them: the rate is levied by precept on the borough councils, who add the amount to their own expenses; (ix) a police rate, which in part covers the expenses of the Metropolitan Police, the balance being paid by the Treasury; (x) rates (known as watch rates), levied under the Lighting and Watching Act, 1833, for lighting and watching any parish in which the Act is adopted; "watching" means the employment of police or constables; (xi) various rates under Acts of local application, such as improvement rates, sewers and drainage rates, levied by improvement commissioners and other bodies.

See TOWNS IMPROVEMENT.

Rates Advisory Committee. The Ministry of Transport Act, 1919, s. 21, provided that, for the purpose of advising the Minister of Transport as to rates, fares, dues, tolls, etc., there should be a committee, with a legal member nominated by the Lord Chancellor, two members representing the trading and agricultural interests, nominated by the Board of Trade, two members representing the one the employers and the other the men in the transportation business, nominated by the Minister of Transport, and a further additional member also nominated by the Minister; that all or any of the members might be paid; and that the Committee might examine witnesses on oath. This Committee was duly created: but the Railways Act, 1921, s. 80 (4), provides that it shall continue to exist only so long as it may be necessary for the purposes of references under the Harbours, Docks and Piers (Temporary Increase of Charges) Act, 1920; and that Act expires on 15th February, 1923.

Rates Tribunal. The name used in the Railways Act, 1921, to describe the Railway Rates Tribunal (q.v.)

Rate-tithe. A tithe formerly payable *pro rata* for beasts kept in a parish during less than a year.

Ratification is where a person adopts a contract or other transaction which is not binding

on him, because it was entered into by an unauthorised agent, or the like. Thus, if A enters into a contract on behalf of B, without having B's authority to do so, B may either repudiate or adopt the contract; if he adopts it he is said to ratify it, and it then takes effect as if it had been originally made with his authority. It is sometimes a question whether a person's act amounts to a ratification, or is a fresh contract altogether. A fresh contract between the same parties always requires a consideration to support it, while in the case of a ratification there may or may not be a new consideration. As to ratification by infants, see INFANT.

It follows from the nature of the thing that ratification, in the proper sense of the word, cannot take place where the party who professes to ratify a transaction was not in existence when it took place; as where a person enters into a contract as promoter or trustee on behalf of a company which is to be subsequently formed, and the company when formed adopts it. This is making a new contract, and not ratifying an existing one.

The doctrine of ratification is also applied to torts: as where a person ratifies a trespass.

See OMNIS RATIHABITIO RETROTRAHITUR, ETC.; ADOPT; REPUDIATION; AUTHORITY; ULTRA VIRES.

Ratihabitio mandato comparatur (*D.* 50, 17, 60). (Ratification is equivalent to a command.) That is to say, to a command given before the doing of the act which is ratified.

Ratio. Anciently this meant a cause or a judgment delivered therein. *Ponere ad rationem* meant to cite one to appear in judgment. *Ratio*, of course, means also a reason, as in the phrase *ratio decidendi* (the reason or ground of a decision).

Ratio legis est anima legis (*Jenk. Cent.* 45). (The reason for the law is the soul of the law.) That is to say, for the proper understanding of a statute or of a rule of the law, one must understand why the statute or the rule came into existence. Compare CESSANTE RATIONE, ETC.

Rationabile estoverium. Proper alimony: see ESTOVERS.

Rationabili parte, De. This writ lay for brothers in gavelkind and sisters and other coparceners. The writ claimed a certain portion of the land to be held in severalty or, in modern parlance, partition (q.v.). It was abolished by the Real Property Limitation Act, 1833, s. 36.

Rationabili parte bonorum, De. Anciently where a custom existed—as was the case in some places—that one-third of a man's chattels should go to his wife, another third to his children, and the remaining third as he directed by his will, this *writ de rationabili parte bonorum* might be brought by the wife or the children to enforce their rights. This custom existed down to a late period. We have the statute 4 & 5 Will. & Mar. c. 2, entitled "An Act that the inhabitants of the Province of York may dispose of their personal Estates by their Wills, notwithstanding the custom of that province," that is to say the archbishopric of York. A few years afterwards the statute 7 & 8 Will. 3, c. 38, was passed "to take away the Custome of Wales which hinders persons from disposing of their personal Estates by their Wills."

Until 1st June, 1725, even freemen of the City of London were unable to dispose by will of their personal estates: see the statute 11 Geo. 1, c. 18, pream. and s. 17. This deterred citizens of the better class from becoming freemen; and the local and parliamentary franchises (see COMPANIES, CITY) were thus largely in the hands of an undesirable class.

Rationalibus divisis, De. This was a writ commanding the sheriff to delimit the boundaries of the lands of adjoining tenants for life or in fee simple: it belonged to the period of the grand assize and trial by battle.

Ratione tenuræ. This means "by reason or in respect of his tenure." Thus, when a person is liable to repair a highway by reason of his having the tenure or occupation of the adjoining lands, his obligation is said to be *ratione tenuræ*.

Rats and Mice. The Rats and Mice (Destruction) Act, 1919, makes the occupier of any land, house, etc., liable to a penalty not exceeding £20 if he fails to take reasonable steps for the destruction of rats and mice thereon. In default of his taking proper steps the local authority, or in their default, the Ministry of Agriculture and Fisheries, may take action: and the Act, in addition to applying to ships as if they were land, provides for the infliction of penalties on masters who fail, after receipt of the prescribed notice, to take steps to prevent rats and mice from getting ashore.

Rattening. This, in popular phraseology, is where the members of a trade union cause the tools, clothes or other property of a workman to be taken away or hidden, in order to compel him to join the union or cease working. Under s. 7 of the Conspiracy and Protection of Property Act, 1875, it is an offence punish-

able by fine or imprisonment. (See MOLESTATION.) It is not now much practised; trades unions now employ other methods of intimidation.

Ravishment is the old name for the tortious act of taking away a wife from her husband, or a ward from his guardian.

Ravishment de gard. A writ which anciently lay for the guardian by knight service or in socage against one who deprived him of the custody of his ward. It was abolished in 1660 along with the Court of Wards and Liveries (q.v.). Also known as the writ *de hæredе rapto*.

Reader. These were ancients or benchers of the Inns of Court who were selected to give "readings" or dissertations in their Inns. A "double reader" was one who had been already a reader eight or nine years before. Bacon and Littleton were both double readers. Election as a "double reader" was a mark of distinction and, down to 1664, gave the right of calling at first four and then eight students to the Bar.

At the Temple Church there is a clergyman, known as the "Reader," who reads the lessons and preaches on Sunday afternoons. He is elected by the two Temples alternately, and they each pay half his salary. Compare MASTER OF THE TEMPLE.

Reading In. Every clergyman of the Church of England who is instituted or collated to any benefice or preachership must, on the first Sunday that he officiates in his church, publicly read the Thirty-nine Articles and then make a declaration in which he assents to the Articles and undertakes to use the forms in the Book of Common Prayer, "and none other except so far as shall be ordered by lawful authority" (Clerical Subscription Act, 1865, ss. 1, 7). If he does not go through these formalities (popularly known as "reading in") his institution or collation becomes void (*ib.* s. 7). No clear explanation appears to be forthcoming as to how certain clergymen with a pronounced taste for ritual reconcile the forms used in their churches with the undertaking mentioned above.

Re-afforest. This meant to turn again into forest land which had been disafforested: the statute 20 Car. 2, c. 3, did so as regards the Forest of Dean.

Real. See ACTION; COVENANT; EVIDENCE; PERSONAL; IN PERSONAM; IN REM; REAL PROPERTY; REPRESENTATIVE; SECURITY.

Real Composition. An agreement made between the owner of land and the incumbent of a parish, with the consent of the ordinary and the patron of the living, that the land should for the future be discharged from payment of tithes, by reason of some land or other real recompense given in lieu and satisfaction thereof. But since the enactment of the statute 13 Eliz. c. 10, no real composition can be made for any longer term than three lives or twenty-one years, and such compositions are now rarely heard of. See TITHES.

Real Property. Property which, on the death of the owner intestate, passes to his heir through the real representative. Real property is commonly divided into lands, tenements, and hereditaments. See those titles.

Real Representative. The Land Transfer Act, 1897, recites in the preamble that it is expedient to establish a real representative. It does not, however, then proceed to establish a real representative by that name, nor does it define the meaning of the expression; but in Part I. (entitled *Establishment of a Real Representative*) it enacts (s. 1) that realty shall, as personalty already did, vest in the personal representative of a deceased person; and this makes an executor or administrator a real representative, as regards realty.

Real Securities. First mortgages of real estate; freehold ground rents; and (Trustee Act, 1893, s. 5) first mortgages of property held for an unexpired term of not less than two hundred years, and not subject to any rent exceeding one shilling a year or to any condition of re-entry except for non-payment of rent. Trustees can invest in such securities unless expressly forbidden by the instrument creating the trust (*ib.* s. 1) or by statute (s. 50).

Realty is the same as real property. In the old books, an "action in the realty" is a real action.

Reapsilver. Formerly this was a yearly payment made by tenants to a lord for exemption from the duty of reaping for him.

Reasonable Parts. The shares in which the chattels of a deceased were divided in places where there was the custom mentioned under RATIONABILI PARTE BONORUM.

Re-assurance. See RE-INSURANCE.

Re-attachment. This was a second attachment of one who had formerly been attached and had been dismissed the Court without day by reason of the non-coming of the judges or some such casualty. A cause discontinued or put without day could be revived only by re-attachment or re-summons (q.v.).

Rebate is a deduction made from a payment. In bankruptcy a creditor who has

proved for a debt payable *in futuro* does not receive the full amount of the dividends with the other creditors, but must deduct from each dividend a rebate of interest at five per cent. in respect of the period from the declaration of the dividend to the time when the debt becomes payable (Bankruptcy Act, 1914, Sch. II., par. 22).

Rebellion. This means the levying of war against the King by persons who owe allegiance to him.

Anciently it meant also disobedience to the orders of the Courts. See COMMISSION.

Rebinare. To plough for the second or third time arable land lying fallow: see Fleta, lib. 2, c. 73.

Rebut. To rebut is to defeat or take away the effect of something. Thus, when a plaintiff in an action produces evidence which raises a presumption of the defendant's liability, and the defendant adduces evidence which shows that the presumption is ill-founded, he is said to rebut it (see PRESUMPTION). So, on a trial, when a fresh case (that is, a case not merely answering the case of the party who began) is set up by the responding party, and evidence is adduced in support of such fresh case, the party who began may give evidence to rebut it, called rebutting evidence, or proof of a rebutting case.

Rebutter. Under the practice before the Judicature Acts, both at common law and in Chancery, the rebutter was the pleading which followed the surrejoinder. It was rare at common law, and had long been obsolete in Chancery; but the name is still applicable to the corresponding pleading under the new system. See PLEADING.

In the old law of real property, to rebut was to repel or bar a claim. Thus when a person was sued for land which had been warranted to him by the plaintiff or his ancestor, and he pleaded the warranty as a defence to the action, this was called a rebutter.

Recaption is a species of remedy by act of the party which may be resorted to when a man has deprived another of his goods, or wrongfully detains his wife, child or servant: then the person injured may lawfully claim and retake them, so it be not in a riotous manner, or attended with a breach of the peace: but except in the case of chattels and, occasionally, children, such remedy is now practically obsolete.

Recaption, Writ of. If pending an action of replevin for a distress, the defendant distrains again for the same rent or service, the owner of the goods is not driven to another action of replevin, but is allowed a writ of recaption, by which he recovers the goods and damages for the defendant's contempt of the process of the law in making a second distress while the matter is *sub judice*. (See REPLEVIN.) This writ has never been actually abolished, but now the remedy would be an application for an injunction or to have the defendant committed for contempt of Court.

Recapture. By the doctrine of *postliminium* (q.v.) property which has been captured by an enemy and recaptured within twenty-four hours or before being taken to a place of safety, reverts to its original owner; the rule, however, varies with different nations. Under the Naval Prize Act, 1864, s. 40, British property captured at sea and recaptured at any time afterwards by a British ship, is to be restored to the owner on his paying to the recaptor prize-salvage (q.v.) at a rate to be fixed by the Prize Court (q.v.).

Receditur a placitis juris potius quam injuriæ et delicta maneant impunita (*Bac. Max. Reg.* 12). (We dispense with the forms of law rather than that crimes and wrongs should be unpunished.) But this maxim cannot be applied generally except where the maxim *inter arma*, etc., comes into operation. Bacon quotes it as illustrating various propositions of law which are wholly obsolete, such as: "if a man recovers by erroneous judgment and hath issue two daughters, and one of them is attainted, the writ of error shall be brought against both parceners notwithstanding the privity fail in the one."

Receipt generally means an acknowledgment of the receipt of money paid in discharge of a debt (see ACCOUNTABLE RECEIPT). A receipt under hand alone is in general only *primâ facie* evidence, but a receipt under seal amounts to an estoppel, and is conclusive. The forgery of a receipt is felony, punishable on indictment under s. 4 of the Forgery Act, 1913. Under the Stamp Act, 1891, s. 1, Sch. I., s. 101, every receipt (with certain specified exceptions) for £2 or over was liable to a stamp duty of one penny, payable by the use of an adhesive or impressed stamp. This duty was increased to twopence by s. 34 of the Finance Act, 1920. The giving of an unstamped receipt where a stamped receipt is required by law renders the person giving such receipt liable to a fine of £10 (Stamp Act, 1891, s. 103).

Formerly, in certain real and mixed actions, if a man seised of land in right of his wife was sued in respect of the land and made

default, the wife might be received or admitted as a *feme sole* to defend her right. This was called receipt or *defensio juris*.

Receipt of the Exchequer. The legal description of the Exchequer (on its revenue side) before it was reorganised on modern lines. See, for instance, the statutes 5 Geo. 3, c. 26, 57 Geo. 3, c. 84, and 4 & 5 Will. 4, c. 15.

Receipt Rolls. "Rolls" in the Record Office in which the moneys received by the Exchequer were entered during the reigns of Henry II., Richard, John, and Henry III.

See PELLS.

Receiver. In an action in any Division of the High Court, a receiver is a person appointed by the Court, on an interlocutory application, to receive the rents and profits of real estate, or to get in and collect personal property affected by the proceedings, where it appears desirable that he should do so in lieu of the person then having the control of the property, or where the latter is incompetent to do so, as in the case of an infant. The object is to protect the property until the rights of the parties have been ascertained; thus, in an action for the dissolution of a partnership, a receiver is frequently appointed to get in or realise the partnership assets; and under s. 23 of the Partnership Act, 1890 (see also Ord. 46, r. 1A) a receiver may be appointed over the share of an individual partner. A receiver is an officer of the Court, and generally has to give security for the due performance of his duties (see, generally, Ord. 50, rr. 16-22). See MANAGER.

A receiver is also sometimes appointed to enforce a judgment when the property of the defendant is such that ordinary execution by *fi. fa.*, *elegit*, or the like, is inapplicable. As to this, see EXECUTION.

In bankruptcy the official receiver may be appointed interim receiver, at any time after the presentation of the petition, if that course be necessary for the preservation of the estate (Bankruptcy Act, 1914, s. 8), and it is his duty to act as interim receiver after adjudication until a trustee is appointed (s. 74).

A receiver may be, and very frequently is, appointed in lunacy proceedings. See LUNACY.

Sometimes provision is made by agreement for the appointment of a receiver in an extra-judicial matter: thus, a mortgage deed may contain an appointment of, or a power for the mortgagee to appoint, a person to be receiver or receiver and manager of the mortgaged property, in order to secure to the mortgagee the payment of his interest out of the rents and profits. A debenture may contain a similar provision. (See DEBENTURE.) Under s. 19 (1) (iii) of the Conveyancing Act, 1881, a mortgagee may appoint a receiver when the mortgage money has become due and (s. 24 (1)) when he has become entitled to exercise the power of sale conferred by that Act: as to the conditions of the exercise of the power of sale see s. 20.

Receiver-General. An officer of the Duchy Court of Lancaster who receives the revenue of the Duchy.

Receiver-General of Inland Revenue. A former officer of the Inland Revenue: his office was abolished by the Public Accounts and Charges Act, 1891, s. 1; under that section moneys formerly receivable by this officer are now paid direct into the Bank of England.

Receiver-General of the Muster Rolls. An officer mentioned in the statute 35 Eliz., c. 4.

Receiver of the Fines. Anciently this was an officer who received the money of all such as compounded with the king upon original writs.

Receiver of the First Fruits. In 1798, this was an officer of the Court of Exchequer (nominated by the Governors of Queen Anne's Bounty and appointed by the Treasury) whose office was worth about £50 a year after payment of expenses (*Commons Committees' Reports* (1803), Vol. 13, p. 319). It seems to have been a sinecure (*ib.*, p. 201).

Receivers of Wreck are persons appointed by the Board of Trade under ss. 5, 6 of the Merchant Shipping Act, 1894. The duties of a receiver of wreck are to take steps for the preservation of any vessel stranded or in distress within his district (ss. 511-513); to receive and take possession of all articles washed on shore from the vessel (s. 519); to use force for the suppression of plunder and disorder (s. 514); to institute an examination on oath with respect to the vessel (s. 517); and, if necessary, to sell the vessel, cargo or wreck (s. 522.) See WRECK.

Receiving Order. Where a petition, whether by a creditor or by a debtor himself, is presented in bankruptcy, the Court, on proof of the existence of the essentials of bankruptcy, will make what is known as a receiving order, the primary effect of which is to constitute the official receiver the *interim* receiver of the property of the debtor, and to restrain all legal proceedings against the person or property of the bankrupt in respect of any debt provable in the bankruptcy (Bankruptcy Act, 1914,

s. 7). See also s. 37 (2) of the Bankruptcy Act, 1914, and rr. 179-188A of the Bankruptcy Rules, 1915. See BANKRUPTCY NOTICE.

Receiving Stolen Goods is the short name usually given to the offence of receiving any property with the knowledge that is has been feloniously or unlawfully stolen, taken, extorted, obtained, embezzled or disposed of. The crime is a felony or misdemeanour according as the original stealing, etc., was, or if committed within the United Kingdom would have been, a felony or misdemeanour, and is punishable on indictment with penal servitude or imprisonment for various terms, the maximum being fourteen years (Larceny Act, 1916, s. 33). A number of the less serious forms of larceny are punishable summarily under various sections of the Larceny Act, 1861; and, under ss. 97, 99 of that Act, any person receiving or aiding, etc., the receiving of any property in respect of which such summary conviction can be had, is himself liable on summary conviction to the same punishment as if he were the principal offender.

On any prosecution for receiving or possessing stolen property, (1) the possession of other property stolen within twelve months preceding the offence charged, and (2) any conviction during five years preceding the offence charged of an offence involving fraud or dishonesty, may be proved as evidence of guilty knowledge, provided that the last-mentioned fact may not be proved without giving the prescribed notice, and unless the property referred to in the pending charge is proved to have been found in possession of the prisoner (Larceny Act, 1916, s. 43).

Recent Possession. See POSSESSION.

Reception Order. This is the authorisation without which (or a summary reception order (q.v.) or an urgency order (q.v.)) no person, not being a pauper or a lunatic so found by inquisition, can be received and detained as a lunatic (Lunacy Act, 1890, s. 1 (1)) except (see s. 22) by a relation or friend. It can be made only by two or more Commissioners in Lunacy (s. 23) or a "judicial authority," that is to say, a County Court judge (s. 9) or a justice specially appointed for the purpose (ss. 9 (1), 10). A patient can be received under it only within seven days from its date (s. 36 (3)). Except in the case of a lunatic so found, it lasts for only one year from its date, but it can be continued indefinitely on production to the Commissioners in Lunacy of the requisite certificates, etc. (*ib.* s. 38; Lunacy Act, 1891, s. 7).

Recipitur in modum recipientis (5 *Bing. N. C.* 461). See QUICQUID SOLVITUR, ETC.

Reciprocity. In our law this is the same as mutuality (q.v.). The term is used in international law to denote the relation existing between two States when each of them gives the subjects of the other certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the latter State.

Recitals in a deed, agreement or other formal instrument are statements introduced to explain or lead up to the operative part of the instrument. They are generally divided into narrative recitals, which set forth the facts on which the instrument is based; and introductory recitals, which explain the motive for the operative part. Thus, in an assignment of leasehold property, the deed commences by reciting the lease, that is, by stating that by an indenture of such a date made between such and such parties the property was demised to the lessee for a certain term: this is a narrative recital; the deed then recites that the assignee has agreed with the assignor (the original lessee) for the purchase of the property for the residue of the term: this is an introductory recital, being followed immediately by the operative part or assignment. A formal recital always commences with the word "whereas." The modern tendency is to omit narrative recitals, unless it be desirable to make them evidence of the facts stated in them.

A recital is evidence as against the parties to the instrument and those claiming under them; and in an action on the instrument itself (though not on a collateral matter) the recitals operate as an estoppel (q.v.). By the Vendors and Purchasers Act, 1874, s. 2, recitals in deeds and other instruments twenty years old are made *primâ facie* evidence of the truth of the facts, matters and descriptions therein recited.

Recognisance.—I. At common law a recognisance is an obligation or bond acknowledged before some Court of record or magistrate duly authorised, or before special commissioners appointed by the King, and afterwards entered of record, that is, enrolled in some Court of record (q.v.). The person acknowledging it, that is, the person bound by it, is called the conusor (or cognisor), and the person in whose favour it is made, the conusee (or cognisee). The object of a recognisance is to secure the performance of some act by the conusor, such as to appear at the assises, to keep the peace, to pay a debt, to pay costs,

etc. A receiver appointed by the Chancery Division is sometimes ordered to enter into a recognisance with sureties to secure the payment of the moneys received by him, the cognisees being (Ord. 60, r. 4) the two senior masters of the judge to whom the cause or matter is assigned. The recognisance need not be enrolled (Ord. 61, r. 8A). See ENROLMENT; PETTY BAG OFFICE; VACATE.

Formerly, a recognisance, like a judgment, bound the lands of the conusor, but this is no longer so. (See JUDGMENT.) A recognisance, however, still has priority over the ordinary debts of the conusor on his death. (See ASSETS.) The most usual way of enforcing a recognisance is by estreat (q.v.): procedure by way of *scire facias* (q.v.) no longer applies.

II. Recognisances by statute were those created under 23 Hen. 8, c. 6, and called recognisances in the nature of statute staples, because they had the same formalities and effects as statute staples, except that they were acknowledged before judges instead of mayors. They are obsolete. See STATUTE MERCHANT AND STAPLE.

III. In criminal law, a person who has been found guilty of an offence, may in many cases be required to enter into a recognisance by which he binds himself to keep the peace and be of good behaviour for a certain period. As to recognisances given in Courts of summary jurisdiction, and the mode of their enforcement, see the Summary Jurisdiction Act, 1879, s. 9. Recognisances are given verbally in Courts of record. See also BAIL.

Recognisee. The conusee in a recognisance (q.v.).

Recognisor. The conusor in a recognisance (q.v.).

Recognition. In early times this meant the inquiry held by recognitors (q.v.).

Recognitione adnullenda per vim et duritiem facta, De. A writ which anciently lay to the justices of the Common Bench directing them to send a record (q.v.) as to a recognisance which the recognisor alleges to have been acknowledged by force and duress, in order that, if such should appear, the recognisance should be annulled.

Recognitors of an assise were the jurors in an assise of novel disseisin or the like. See ASSISE.

Reconstruction of Company. A company which is being wound up voluntarily may be reconstructed under s. 192 of the Companies (Consolidation) Act, 1908, by a transfer of its undertaking to another company. A company which is being wound up either voluntarily or by the Court may be reconstructed by arrangement with its creditors under s. 120 of the same Act.

Recontinuance seems to have been used to signify that a person had recovered an incorporeal hereditament of which he had been wrongfully deprived. Thus, Coke writes, "A is disseised of a mannor, whereunto an advowson is appendant, an estranger [*i.e.*, neither A nor the disseisor,] usurpes to the advowson, if the disseisee [A] enter into the mannor, the advowson is recontinued again, which was severed by the usurpation. . . . And so note a diversitie betweene a recontinuance and a remitter; for a remitter cannot be properly, unlesse there be two titles; but a recontinuance may be where there is but one." (*Co. Litt.* 363B.) See REMITTER; DISCONTINUANCE.

Reconversion is that imaginary process by which a prior constructive conversion is annulled and the converted property restored in contemplation of law to its original state. Thus, if real estate is devised to A, upon trust to sell and to pay the proceeds to B, the realty, by virtue of this absolute trust, is constructively converted into personal estate; but if B, before the property is sold, elects to take it as land, it is then said to be reconverted, and A is bound to convey the land to him accordingly. This is called reconversion by act of the party. The right of reconversion cannot be exercised to the prejudice of other persons (*e.g.*, joint owners or remaindermen). Reconversion by operation of law is where the property originally directed to be converted comes into the possession of a person absolutely entitled to dispose of it, and is left by him in its original condition, without any declaration of his intention regarding it. See RESULT.

Reconveyance takes place where a mortgage debt is paid off, and the mortgaged property is conveyed again to the mortgagor or his representatives free from the mortgage debt. The operative words used in a reconveyance are the same as those which would be used if it were an ordinary conveyance between the parties, the *habendum* expressing that the property is discharged from the debt. The reconveyance is usually endorsed on the mortgage. See REDEEM.

Record.—I. Records "are," in the words of Gilbert, "the memorials of the legislature, and of the King's Courts of justice, and are authentic beyond all matter of contradiction." "But," says Coke, "legally records are restrained to the rolles of such [courts] only as are courts of record, and not the rolles of

inferiour, nor of any other courts which proceed not *secundum legem et consuetudinem Angliæ*. And the rolles being the records or memorialls of the judges of the courts of record, import in them such incontrollable credit and veritie, as they admit no averment, plea, or proofe to the contrarie. And if such a record be alleaged, and it be pleaded that there is no such record, it shall be tried only by it selfe." (*Co. Litt.* 260A.) See NUL TIEL RECORD; RES JUDICATA; TRIAL.

Records are of the following principal kinds:—(i) Acts of Parliament, attainders and other parliamentary proceedings; (ii) judgments, fines, inquisitions, extents, returns to writs of mandamus, habeas corpus, etc., and other proceedings of Courts of record; (iii) proceedings on the revenue side of the Exchequer, recognisances, Crown grants, letters patent, and other instruments of an extra-judicial nature which have been enrolled. See PUBLIC RECORDS.

II. Under the old common law practice, the *nisi prius* record was a copy of the issue (q.v.) as delivered in the action, engrossed on parchment. It was the official statement of the writ and pleadings for the use of the judge at *nisi prius*; to it were annexed the particulars of demand and set-off, if any (see PARTICULARS); and on it were subsequently entered the *postea* (q.v.) and judgment. The record was delivered to the proper officer of the Court (generally the associate), which was commonly called entering the record, and it was retained by him until the case was disposed of, unless the plaintiff was not prepared to proceed with the trial, in which case he could withdraw the record, so as to prevent the trial from going on. Now, in lieu of making up the record, the party entering the action for trial delivers to the officer two copies of the pleadings, one of which is for the use of the judge (Ord. 36, r. 30), and is sometimes referred to as the record. The practice of withdrawing the record has been abolished; but the Court may order the action to be discontinued, on terms. See DISCONTINUANCE.

Record and Writ Clerks. See CLERKS OF RECORDS AND WRITS.

Recordari facias loquelam was a writ used in the time of Fitzherbert (q.v.) to remove a suit from an inferior Court not of record into one of the superior Courts of common law: *e.g.*, a suit of replevin in the sheriff's County Court. See now CERTIORARI.

Record, Conveyances by. These include (1) Acts of Parliament under which land passes, (2) Royal Grants, (3) Fines, and (4) Common Recoveries. All these are matters of record.

Record, Courts of. See COURT.

Record, Debts of. See DEBT.

Recorder of a borough is a barrister, of five years' standing at the least, appointed by the Crown under the Municipal Corporations Act, 1882, to act as a justice of the peace in a borough having a separate Court of Quarter Sessions; he receives a salary, and takes precedence after the mayor. By virtue of his office he is sole judge of any Court of record existing within the borough, that is to say, of the Court of Quarter Sessions and the civil Court of record, if any. There is also the Recorder of the City of London, whose office has existed from time immemorial; he is appointed by the corporation, but (Local Government Act, 1888, s. 42 (14)) he cannot perform any judicial functions unless the Crown also appoints. He is not disqualified by office from being a member of the House of Commons; but it may be taken as having been now settled that he should not seek election or re-election as a member of that House, although he may retain his seat until the general election next following his appointment to the office, if he happens to have been a member at the time of his appointment. The salary is, at present, £4,000 a year. See MAYOR'S COURT OF LONDON.

Recorder's Act, The. A former popular title of the Larceny Act, 1868, which was passed at the instance of Mr. Russell Gurney, Recorder of the City of London, 1857-1878. In 1865 he had been elected to the House of Commons, of which he was a member until his death in 1878: and no Lord Chancellor protested.

Record Office. This office was established by the Public Record Office Act, 1838 (see PUBLIC RECORDS), which placed it under the superintendence of the Master of the Rolls (q.v.), and provided for the appointment of a Deputy Keeper of the Records, who is, for practical purposes, the head of the office. The office, the full title of which is the Public Record Office, has been accommodated since 1900 in a building in Chancery Lane popularly known as the Rolls Office.

Record, Trial by. Before the Judicature Acts, where it appeared on the pleadings in an action that one party alleged and the other party denied the existence of a record (such as a judgment) there was the issue known as *Nul Tiel Record* (q.v.), and the Court would thereupon order a trial by inspection and examination of the record. Failing proof of

the record, judgment was given for the party who had denied its existence. See FAILURE OF RECORD.

Recoverer. Used in the fifteenth century as a synonym of recovery (q.v.) in the sense of common recovery.

Recovery, in its general sense, is where a person obtains something which has been wrongfully taken or withheld from him, or to which he is otherwise entitled. See REMEDY.

(i) Proceedings for the recovery of land from a person wrongfully in possession of it, are taken either in the High Court of Justice, or in the County Courts, or before justices. In the High Court the proceedings are of two kinds. The ordinary action for the recovery of land follows the same course as any other action, except in some cases as regards service of the writ (see SERVICE) and appearance (q.v., see also JOINDER). It is a substitute for the old action of ejectment (q.v.). An action for the recovery of land under the Common Law Procedure Act, 1852 (ss. 213 *et seq.*), may be brought where there is a contract of tenancy in writing, and the tenant holds over after the determination of the tenancy. The chief peculiarity of this action is that the defendant may be ordered to give bail by recognisance with two sureties, in default of which judgment is given for the plaintiff. See BAIL.

(ii) An action may be brought in a County Court by a landlord against his tenant: (*a*) for the recovery of land, the yearly value or rent of which does not exceed £100, where no fine had been paid and the tenant holds over (County Courts Act, 1888, s. 138), and (*b*) where the yearly value or annual rent does not exceed £100 and there is half a year's rent in arrear and the landlord has a right of re-entry (*ib* s 139). In any action which is commenced in the High Court for the recovery of land against a tenant (or a person claiming through a tenant) overholding or whose term is liable to forfeiture for non-payment of rent, and the action could have been commenced in the County Court, then the High Court may, on application at any time, transfer the action to the County Court (County Courts Act, 1919, s. 1). As to ejectment in the County Courts, see EJECTMENT.

(iii) A summary mode of recovering the possession of land held for a term not exceeding seven years, and at a rent not exceeding £20, where the tenant holds over, is given by the Small Tenements Recovery Act, 1838, which empowers justices in petty session to grant a warrant for the eviction of the tenant. A similar remedy is given in the case of premises held at a rackrent which have been deserted by the tenant. See DESERTED PREMISES.

(iv) A recovery or common recovery was a mode of barring estates tail in use down to the year 1833. It was a judgment in a fictitious suit in the nature of a real action, brought by a friendly plaintiff against the tenant in tail, who, on being sued, vouched (that is, called upon) some person to defend the action, on the ground that he had granted the estate tail to the tenant in tail with warranty of title. (See WARRANTY; VOUCH.) This person (the vouchee) was accordingly called on, and, being a party to the scheme, admitted the imaginary grant and warranty, and then, after the plaintiff had craved leave to "imparl" (q.v.) with him, allowed judgment to go against him by default; whereupon judgment was given for the plaintiff to recover the lands from the tenant in tail, and the tenant in tail had judgment against the vouchee for lands of equal value The vouchee being a man of straw (generally the crier of the Court), the tenant in tail recovered no such lands, but his own land went to the plaintiff under the judgment, freed from the estate tail and the remainders and reversions expectant on it, and then the plaintiff conveyed it back to him in fee simple. In some manors estates tail in copyholds were barred by customary recoveries. Recoveries were also used for other purposes besides barring estates tail. They were abolished by the Fines and Recoveries Act, 1833, which substitutes a simpler disentailing assurance.

See PRÆCIPE; compare FINE.

Recreation Grounds. The village green was the primitive recreation ground: in it the villagers had such limited right of recreation as mentioned under *Jus Spatiendi, etc.* Provision was made by the later Inclosure Acts for the appropriation of commons or parts of commons as places of recreation for the inhabitants of the vicinity: see, for instance, the Inclosure Act, 1845, ss. 30, 73, and the Inclosure Act, 1846, s. 4, as extended by the Commons Act, 1876, ss. 22, 23. Under the Towns Improvement Clauses Act, 1847, the local authority, where the necessary provisions of that Act are in force, may provide places of resort and recreation. The Recreation Grounds Act, 1859, made provision for the formation and management of places of recreation in and near populous places. The Town Gardens Protection Act, 1863, contains provisions for turning into

public gardens derelict squares, etc., in cities and boroughs. Meanwhile, the Public Improvements Act, 1860, had provided machinery for the formation of walks and playgrounds in parishes with a population of not less than 500: and the Act is still utilised in rural districts. The Public Health Act, 1875, s. 164, authorizes the formation and regulation of pleasure grounds by urban authorities; and this enactment has been applied by various subsequent enactments (which cannot be here enumerated) to rural district councils and parish councils. As to the regulation of pleasure grounds see ss. 76, 77 of the Public Health Acts Amendment Act, 1907.

The enactments above mentioned are only a few of those which have been passed with regard to recreation grounds during the last eighty years.

See Open Spaces; National Trust.

Recta prisa regis. The lawful due of the king: prisage (q.v.).

Rectification; Rectify. To rectify is to correct or define something which is erroneous or doubtful. Thus, where the parties to an agreement have determined to embody its terms in the appropriate and conclusive form, but the instrument meant to effect this purpose (*e.g.*, a conveyance, settlement, etc.) is by mutual mistake so framed as not to express the real intention of the parties, an action may be brought in the Chancery Division of the High Court to have it rectified (Judicature Act, 1873, s. 34); but every Division can give effect to a claim for rectification in any action before it. The rectification is generally effected by endorsing on the instrument a copy of the judgment or order, declaring in what respects the instrument requires to be rectified. (See Mistake; Rescission.) County Courts have a like jurisdiction where the relief sought does not exceed £500 in value (County Courts Act, 1888, s. 67).

An action to rectify or ascertain the boundaries of two adjoining pieces of land may be brought in the Chancery Division of the High Court. The Ministry of Agriculture and Fisheries have powers, under the Inclosure Acts, 1845 to 1878, to settle confused boundaries in certain cases: under the Copyhold Act, 1894, s. 52, they can also settle disputed boundaries of enfranchised copyholds. See Boundary.

Recto; Breve de recto. A writ of right (q.v.). These were of many kinds. Only a few are mentioned below. All except those relating to dower were abolished by s. 36 of the Real Property Limitation Act, 1833.

See Right Close.

Recto de advocatione ecclesiæ. A writ which formerly lay for the owner in fee of an advowson, where the clerk of the church died and a stranger presented a clerk to the church.

Recto de custodiæ terræ et hæredis. A writ which lay for the lord of a tenant holding by knight's service where the tenant died and a stranger both entered the land and took the body of the heir. It disappeared in 1660 with the Court of Wards and Liveries.

Recto de dote. A writ of right of dower which lay for a widow who alleged that she had received only part of her dower and claimed the residue against the heir of her husband. It was abolished by the Common Law Procedure Act, 1860, s. 26, which substituted a writ of summons.

Recto de dote unde nihil habet. A writ which lay for a widow who had received no part of her dower. It was abolished by the statute which abolished the *recto de dote*.

Recto de rationabili parte, De. The fuller title of the writ *rationabili parte* (q.v.)

Rector is an officer of the church, having a benefice with cure of souls, that is, spiritual charge of his parishioners, with the right and duty of celebrating services and sacraments in the church. He obtains his benefice by ordination, presentation, institution, and induction (q.v.). He has an exclusive title to all the emoluments of the living, that is, the parsonage house and glebe, the tithes, etc. An impropriator (q.v.) is sometimes called a lay rector; and an appropriator can properly be described as an appropriate rector. *Rector ecclesiæ* meant a clerk having the parsonage of a vicarage which is endowed, while *rector ecclesiæ parochialis* meant one having care and charge of a parish church. See Advowson; Appropriation; Benefice; Proprietary Chapel.

Rectory. A certain portion of land tithes and offerings established by law for the maintenance of an incumbent having the cure of souls within the parish of which he is rector. It is not essential that there should be a house, but the term is popularly applied only to the house, which almost invariably is upon the land or glebe.

A sinecure rectory was one in which there were both a rector and vicar, the latter being entrusted with the cure of souls. Such rectories were practically abolished by the

Ecclesiastical Commissioners Act, 1840, ss. 48, 54, 55, 71.

Recto sur disclaimer. A writ which anciently lay in the Common Pleas for a lord whose tenant disclaimed to hold of him, that is to say, alleged that he did not hold of him. The question of title was tried upon this writ.

Rectum. This meant right, and it also was used as meaning a trial. Thus *rectum rogare* meant to petition the judge to do right, *stare ad rectum* meant to stand one's trial or to abide by the decision of a Court, and *esse ad rectum in curia* meant the same as *stare ad rectum*.

Rectus in curia. One who stood at the bar of a Court and no accusation was made against him: also one whose outlawry had been reversed. Either of such persons was "right in the law," which is what the expression literally meant.

Recusants. A generic term applied after the Reformation to those who denied the supremacy of the king in matters ecclesiastical and refused to attend the services of the Church of England. At first there was no clear distinction made between various kinds of recusants. Thus, the statute 1 Eliz. c. 2, s. 4, imposed penalties of small amount upon all persons failing to attend the parish church. The statute 35 Eliz. c. 2, entitled "An Act against Popish Recusants" was, however, as its title indicates, specially directed against Roman Catholics, to whom the title of recusant came more especially to be applied. That statute, together with the statute 3 Jac. 1, c. 4, imposed heavy penalties on Roman Catholics who failed to receive the Communion of the Established Church and to attend its services. An oath against transubstantiation was required by the statute 25 Car. 2, c. 2, entitled "An Act for Preventing Dangers which may happen from Popish Recusants"; and from this time other recusants came to be known distinctively as Protestant Dissenters. See NONCONFORMISTS; PAPIST; TEST ACT; ROMAN CATHOLIC.

Red Book of the Exchequer. This is believed to have been compiled before 1234 by Alexander de Swereford, who before that year was an official in the Exchequer, and from 1234 to his death in 1246 was a Baron of the Exchequer (q.v.). He compiled it, he tells us, in order that there might be a permanent record of the liability of Crown tenants for the various incidents of their tenure. But it was much more than that. It is a veritable encyclopædia of everything which might be useful to the officers of the Exchequer. It contained a register of documents relating to Crown property; forms of writs; directions as to procedure; and oaths to be taken by the officers of State, which were actually in use to quite recent times. Down to about 1375 numerous additions were made to the book, and during the subsequent two centuries some more were made.

The book was always of great authority, and was second only to Domesday in importance as a register. It was in the custody of the King's Remembrancer from the earliest times down to 1870, when it was transferred to the Master of the Rolls. It was edited (as No. 99 of the Rolls Series) by Mr. Hubert Hall in 1896.

Reddendo singula singulis. A clause in an instrument is said to be read *reddendo singula singulis* ("giving each to each") when one of two provisions in one sentence is appropriated to one of two objects in another sentence, and the other provision is similarly appropriated to the other object. Thus, if a testator makes a will in these terms: "I devise and bequeath all my real and personal property to A," it will be construed *reddendo singula singulis* by applying "devise" to "real property," and "bequeath" to "personal property."

Reddendum (="that which is to be paid or rendered") is that clause in a lease which specifies the amount of the rent and the time at which it is payable. It formerly always began with the words "yielding and paying."

Reddidit se. (He gave himself up.) In connection with the old law of bail, under which a defendant in a pending civil action was arrested in default of finding bail, the term was used where a defendant who had found bail afterwards surrendered himself so as to discharge his bailsmen.

Redditarius; Redditarium. *Redditarius* was a tenant, and *redditarium* the aggregate rental of an estate.

Reddition. Anciently this meant a formal admission in the course of legal proceedings that lands were the property, not of the person making the admission, but of him who sought to recover them.

Redditus. Rents. The more correct form of the word is *reditus*, but the form *redditus* is generally used in the old books.

Redditus albi. See ALBA FIRMA.

Redditus assisus. Assise rents (q.v.).

Redditus capitales. Chief rents: see RENT.

Redditus nigri. See ALBA FIRMA.

Redditus quieti. Quit rents: see RENT.

Redditus siccus. Rent-seck: see RENT.

Redeem; Redemption. Redeeming or redemption is where a person having the right to do so pays off a mortgage debt or charge upon property, and thus "buys back" (Latin *redimit*) the property; he thereupon becomes entitled to have it reconveyed to him by the mortgagee or creditor. (See EQUITY OF REDEMPTION.) An action or suit for redemption is one brought to compel the mortgagee to reconvey the property on payment of the debt and interest. See RECONVEYANCE.

By the Conveyancing Act, 1881, s. 15, where a mortgagor is entitled to redeem, he may require the mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs. This provision does not apply where the mortgagor is or has been in possession; but in all other cases it applies, notwithstanding any stipulation by the parties to the contrary.

As to the redemption of quit rents, etc., see RENT.

Redemise. See DEMISE AND REDEMISE.

Red Game. An obsolete name for grouse (q.v.) as distinguished from black game (q.v.).

Re-disseisin. Where a person, having been disseised, recovered seisin of his freehold and possession had been delivered by the sheriff, but the same person was again disseised by the same disseisor, then there was a re-disseisin, for which, under the Statute of Merton, the re-disseisors were liable to imprisonment. Proceedings were taken by way of the writ of re-disseisin.

Re-disseisin was also known as "*disseisina facta super disseisinam*" (one disseisin after another).

Reditus. See REDDITUS.

Reduction into Possession is the act of exercising the right conferred by a chose in action, so as to convert it into a chose in possession; thus a debt is reduced into possession by payment

The term was chiefly used with reference to the exercise by a husband of the right to reduce into possession choses in action belonging to his wife; and the question whether he had done so was of importance from the rule that his wife's choses in action did not vest in him, as her other chattels did, unless he had reduced them into possession during the coverture. Thus, if C owed a debt of £500 to A, a *feme sole*, and A married B, B had the right to receive the £500 from C, or to sue him for it: and if he did so, and obtained payment or judgment against C, he had reduced the chose in action into possession, and the £500 belonged to him; if, however, B died without having enforced his right to the £500, it survived to A as if she had never been married. Choses in action falling within this rule included debts, arrears of rent, legacies, residuary personal estate, money in the funds, shares, etc., but not chattels personal which at the time of the marriage were in the possession of third persons. In order that the act of the husband might operate as a reduction into possession, there had to be an intention to that end, coupled with some act giving effect to the intention. As a general rule, any act by which the property was brought into the exclusive control of the husband (in his character of husband, and not as trustee, or executor, etc.), was a reduction into possession. Thus, if a debt due to the wife was received by the husband, or he brought an action for the debt in his sole name and recovered judgment, the debt was reduced into possession. And although an assignment by the husband of a debt due to the wife did not defeat her right by survivorship, unless the assignee reduced it into possession during the husband's lifetime, yet if a bill of exchange or promissory note was made or endorsed to a married woman during coverture, and the husband endorsed it to a stranger, or if he caused stock belonging to his wife to be transferred into his sole name, this operated as a reduction into possession But if he transferred the stock into the joint names of himself and his wife, this did not operate as a reduction into possession.

As to the present law, see MARRIED WOMEN'S PROPERTY ACTS.

Reduction of Capital. By the Companies (Consolidation) Act, 1908, ss. 46-56, any company limited by shares may pass a special resolution to reduce its capital; it must then add the words "and reduced," as the last words of its name, unless the Court, for the reason specified in s. 48, dispenses with these words. The resolution is inoperative until the company has applied to the Court (*e.g.*, to the High Court, by petition presented in the Chancery Division) to confirm the reduction; and the Court, if satisfied that the creditors of the company consent to the reduction, or that their claims have been discharged or secured, may make an order confirming the reduction.

Without the sanction of the Court, (1) a company limited by shares or guarantee may, if so authorised by its articles, reduce its capital by cancelling unissued shares (s. 41 (1)), and may return accumulated profits to shareholders in reduction of paid-up share capital, the unpaid capital being thereby de-

creased by a similar amount (s. 40); (2) a guarantee company registered before January 1, 1901, may, merely by special resolution altering its articles, reduce its capital (see the (repealed) Companies Act, 1862, Sch. 11, Form C); and (3) an unlimited company can provide by its articles and memorandum for any return of capital which may be considered advisable.

Re-entry. See RIGHT OF ENTRY; PROVISO.

Reeve; Reve. In Anglo-Saxon times this meant an official holding high rank under the king, but then and later it was applied to many minor officials. Thus the *præpositus ecclesiæ*, who was later known as the church-reeve and was still later represented by the churchwarden; and see FIELD-REEVE; DYKE-REEVE. Before the enactment of the Municipal Corporations Act, 1835, the borough reeve was the principal officer of many towns. The word meant literally a steward or bailiff. See PRÆPOSITUS; REEVELAND.

Re-examination. See EXAMINATION.

Re-exchange is the damages which the holder of a bill of exchange sustains by its being dishonoured in a foreign country where it was made payable. The theory of the transaction is thus stated by Byles: "A merchant in London indorses a bill for a certain number of Austrian florins, payable at a future date in Vienna. The holder is entitled to receive in Vienna, on the day of the maturity of the bill, a certain number of Austrian florins. Suppose the bill to be dishonoured. The holder is now, by the custom of merchants, entitled to immediate and specific redress—by his own act—in this way. He is entitled, being in Vienna, then and there to raise the exact number of Austrian florins, by drawing and negotiating a cross bill, payable at sight, on his indorser in London, for as much English money as will purchase in Vienna the exact number of Austrian florins, at the rate of exchange on the day of dishonour: and to include in the amount of that bill the interest and necessary expenses of the transaction. This cross bill in called in French the *retraite*. The amount for which it is drawn is called in low-Latin *ricambrium*, in Italian, *ricambio*, and in French and English re-exchange. If the indorser pay the cross or re-exchange bill, he has fulfilled his engagement of indemnity. If not, the holder of the original bill may sue him on it, and will be entitled to recover in that action the amount of the *retraite* or cross bill, with the interest and expenses thereon. The amount of the verdict will thus be an exact indemnity for the non-payment of the Austrian florins in Vienna on the day of the maturity of the original bill. According to English practice, the *retraite* or re-exchange bill is now seldom drawn, but the right of the holder to draw it is settled by the law merchant of all nations: and it is only by a reference to this supposed bill that the re-exchange, in other words, the true damages in an action on the original bill, can be scientifically understood and computed."

The Bills of Exchange Act, 1882, s. 57, is declaratory of the law as above stated: s. 89 of the same Act makes re-exchange recoverable in respect of a promissory note.

Re-extent is a second execution by extent in respect of the same debt. See EXTENT.

Re. Fa. Lo. The popular abbreviation of the name of the obsolete writ *Recordari facias Loquelam* (q.v.).

Refare. To rob or steal (Leg. Hen. 1, c. 83).

Refer; Reference. To refer a question is to have it decided by a person nominated for the purpose, in lieu of the ordinary procedure by action, trial or other judicial proceedings. The person to whom the question is referred is sometimes called the referee, and the proceedings before him constitute the reference: these proceedings to a great extent resemble those on an ordinary trial, except that they are private; witnesses are examined, and the referee is addressed on behalf of each of the parties, and he makes an award or report containing his decision. See ARBITRATION.

In the practice of the Chancery Division, questions of detail arising in an action or suit are frequently "referred to chambers," that is, the judge's Chief Clerk is directed to inquire into them and certify the result to the Court. (See CERTIFICATE; INQUIRY.) Sometimes a petition, instead of being disposed of in Court, is referred to chambers to be dealt with by the judge in private; *e.g.*, a petition for leave to marry a ward of Court.

Similarly, in the King's Bench Division, when damages have to be assessed under an interlocutory judgment (see JUDGMENT), and the amount is substantially a matter of calculation, the Court may direct it to be ascertained by an officer of the Court, who has the same powers as if he were acting under a writ of inquiry. Such a reference (which is cheaper and quicker than a writ of inquiry) is generally ordered when the damages consist of interest, calls on shares, a sum of foreign money, etc. See ORDER OF REFERENCE; ENQUIRY; ENQUIRY, WRIT OF.

Under the Lands Clauses Consolidation Act,

1845, the Railways Clauses Consolidation Act, 1845, the Agricultural Holdings Acts, 1908 to 1913, and similar Acts, questions of compensation are generally settled by a reference as provided by the Acts. See COMPENSATION.

Every appeal to the Privy Council is theoretically supposed to be first submitted to the King in Council, and then referred by him to the Judicial Committee, who report to him their opinion. But now a general Order in Council is made in the November of every year as a matter of course, directing all appeals presented within the next twelve months to be referred to the Judicial Committee.

Referee is a person to whom a question is referred for his decision or opinion (see REFER). In ordinary cases, the person to whom a question is referred is called an arbitrator, the name "referee" being generally used in cases under the Arbitration Act, 1889, which (see ARBITRATION) empowers the Court to refer any question arising in a cause or matter to an official or special referee for inquiry and report. (See REFER; TRIAL.) An official referee is a paid and permanent officer of the Court (Judicature Act, 1873, s. 83). A special referee is one who is agreed on between the parties and remunerated by them, the amount being determined by the Court (Arbitration Act, 1889, ss. 14, 15).

The Workmen's Compensation Act, 1906, s. 10, provides for the appointment of registered medical practitioners as medical referees for the purposes of that Act.

The National Insurance Act, 1911, s. 90, provides for the appointment of "courts of referees" in connection with that Act, and enacts that each such court shall consist of one or more members chosen to represent employers, an equal number chosen to represent workmen, and a chairman appointed by the Board of Trade. The Insurance Commissioners may authorise such courts of referees to decide disputes between an insured person and an Insurance Committee. (s. 67, (2), (3), (4)).

In parliamentary practice, referees on private bills are members who were appointed in 1864 by the House of Commons to report on engineering questions and questions of *locus standi* arising on private bills, but since 1868 they decide only questions of *locus standi* (q.v.). They are the Chairman and the Deputy Chairman of the Committee of Ways and Means and not fewer than seven other members: collectively they are known as the Court of Referees: and three of them are necessary to constitute the Court.

Reference in Case of Need. When a person draws or endorses a bill of exchange, he sometimes adds the name of a person to whom it may be presented "in case of need," that is, in case it is dishonoured by the original drawee or acceptor. (See Bills of Exchange Act, 1882, s. 15.) See ACCEPTANCE.

Reference of Action. See ARBITRATION.

Reference to Record. When an action is commenced, an entry of it is made in the cause-book according to the year, the initial letter of the surname of the first plaintiff, and the place of the action in numerical order among those commenced in the same year; *e.g.*, "1876, A. 26"; and all subsequent documents in the action (such as pleadings, and affidavits) bear this mark, which is called the "reference to the record." (See Ord. 61, r. 19.) See CAUSE BOOKS; TITLE.

Referendarius. See PROLOCUTOR.

Referendum. The French *plébiscite*, that is to say, a direct vote of electors upon a particular matter or measure. It is unknown to our Constitution.

Reform. To reform an instrument is to rectify it. See RECTIFICATION.

The Reform Act is the statute 2 Will. 4, c. 45, more accurately described as the Reform Act, 1832. That statute and the Representation of the People Acts, 1867 and 1884, are popularly known by the collective title of the Reform Acts, which will now apparently include also the Representation of the People Act, 1918. See ELECTORAL FRANCHISE.

Reformatory. The Children Act, 1908, s. 44 (1), gives a definition of a reformatory school which is identical with that of an industrial school (q.v.), except that as regards a reformatory school the words "youthful offenders" are substituted for the word "children" used in the definition of an industrial school. There is no statutory definition of the expression "youthful offender": but it is evident from s. 57 that it means a person who is convicted, whether summarily or on indictment, and who, in the opinion of the Court, is over twelve and under sixteen. Such a person can be committed to a reformatory under s. 57. A child aged twelve may be transferred from an industrial to a reformatory school in the circumstances set forth in s. 71 (2): and it would appear that upon such transfer he becomes a "youthful offender."

Refresher is a fee paid to a counsel on the trial of an action in addition to the fee originally paid to him with his brief. It is paid for every clear day which is occupied by the trial

after the first five hours: it varies normally from not more than ten guineas for a leader to not less than two guineas for a junior: but in special circumstances larger refreshers may be allowed (Ord. 65, r. 27 (48)).

Refreshing Memory. A witness is in some cases allowed to refresh his memory while under examination, by referring to a document which is not itself admissible as evidence. Thus, a witness who has made a memorandum of a transaction may in many cases use it to refresh his memory. So a tradesman may use his account books to refresh his memory when giving evidence in an action for goods supplied.

Refreshment Houses. This term includes all houses, rooms, shops or buildings kept open for public refreshment, resort, and entertainment at any time between the hours of 10 p.m. and 5 a.m., not being licensed for the sale of beer, cider, wine or spirits respectively (Refreshment Houses Act, 1860, s. 6, as amended by the Revenue (No. 2) Act, 1861, s. 8), and also such premises as are mentioned above when refreshment is consumed but not sold therein (*ib.*). Every such house requires a licence (Act of 1860, s. 9), which is merely an Inland Revenue licence, obtainable without application to any licensing authority. The licence costs 10s. 6d. a year where the rent and value are under £30 a year; where the rent and value are higher the licence costs £1 1s. (Revenue (No. 2) Act, 1861, s. 9). No such licence is required if the house is not kept open after 10 p.m. (*ib.* s. 8).

Regale episcoporum. Used anciently as meaning the temporal rights and privileges of a bishop.

Regalia seems to be an abbreviation of *jura regalia* (q.v.). Some old writers divide the royal prerogative into *majora* and *minora regalia*, the former including the regal dignity and power, the latter the revenue or fiscal prerogatives of the crown.

Regalities. Used by certain modern writers as a synonym for *regalia* (q.v.); but the word seems to belong rather to Scottish law (see the Heritable Jurisdiction (Scotland) Act, 1746) than to English law.

Regardant seems originally to have had the same meaning as *appendant* (q.v.). By Littleton's time, however, it was only applied to villeins (q.v.).

Regard, Court of. A forest court, held every third year for the expeditation (q.v.) of dogs.

Regarder. A forest-officer whose duty it was to exercise supervision over the forest, and to make a triennial inspection with a view to enforcing the forest laws.

Regard of the Forest. This meant either the precise area which constituted the forest and which was therefore inspected by the regarder, or else the inspection made by the regarder.

Rege inconsulto. This was a writ which anciently issued from the king to the judges commanding them, in order to prevent prejudice to him, not to proceed with a cause until he had been advised. A late instance of such a writ was that issued during the reign of James I. in an assise brought by one Brownlow against one Mitchel. In that case it was argued against the writ that the Court might proceed because the writ did not allege that the King had any title to the thing in dispute, or that the King would be prejudiced if the Court preceeded. The parties compromised the matter; and the point raised was not decided (see *Moor*, 844).

Regency. A delegation, to one known as a regent, of the powers, or some of the powers, of the Sovereign during his youth, his incapacity or his absence from the kingdom. Such delegation is unusual, though not unknown, during the absence of the Sovereign overseas: in that case, the more usual course since the accession of William III. has been the appointment of Lords Justices. Lords Justices were frequently appointed between 1688 and 1760. There were no such appointments between 1760 and 1820, as neither George III. nor the Prince Regent ever left the kingdom. Between 1820 and 1837 such appointments were sometimes made. During the reign of Queen Victoria there were no Lords Justices, it being held that the Queen, who never left Europe, could, under modern conditions, exercise the royal functions in person while, for instance, on a short visit to France. But the necessity for the appointment of some equivalent for a regent or Lords Justices is still recognised when the Sovereign is absent for a long period at a remote place; and so, before the King went to India in 1911, he held a meeting of the Privy Council at which four "Counsellors of State," or members of that body, were nominated to "transact business" during the absence of the King. They were the Lord President of the Council (Viscount Morley), the Archbishop of Canterbury, the Lord Chancellor and Prince Arthur of Connaught.

If the accession of a youthful Sovereign is probable or possible, the modern practice is to pass an Act providing for the appointment of

a regent. Thus the Regency Act, 1910, provided that, in the event of any child of His present Majesty succeeding to the Throne whilst under eighteen years of age, Queen Mary should be regent.

No provision is made by the Constitution for the appointment of a regent in the event of the mental incapacity of the king. Upon such an occasion during the reign of George III., Parliament met informally and authorised the Lord Chancellor to affix the Great Seal, first to a Commission for opening Parliament, and, secondly, to a Commission for giving the Royal Assent to a Regency Bill.

Regimental Debts. The Regimental Debts Act, 1893, s. 1, provides that on the death of anyone subject to military law, the Committee of Adjustment (q.v.) shall, as soon as may be, secure such property of the deceased as is in camp or quarters, or, if the death be abroad, within a larger prescribed area, and ascertain and pay the preferential charges thereon. The Act and the Regulations made thereunder constitute a complete code on the subject. The Act, except as regards ss. 26, 27, and so much of s. 25 as relates to natives of India, was applied to the Air Force by the Air Force (Application of Enactments) (No. 2) Orders, made 7th May, 1918, pursuant to s. 13 of the Air Force Constitution Act, 1917.

Regio assensu. Anciently this was the writ by which the king assented to the election of a bishop.

Register of Writs. The collection of the various original writs which were prepared at an early period of our law. It was first printed in 1531. As to the early history of the Register, see the articles by Professor Maitland, *Select Essays in Anglo-American Legal History*.

See ACTIONS ON THE CASE.

Register of Writs and Orders. Under the Land Charges Registration and Searches Act, 1888, s. 5, there was established at the Land Registry (q.v.) a register of writs and orders of any Court which affected land; and any such writ or order was made void as against a purchaser for value unless registered in this register. A charge made by the Ministry of Agriculture and Fisheries upon land in favour of a landlord under ss. 15, 16 of the Agricultural Holdings Act, 1908, is declared by s. 19 of that Act to be capable of registration under the Act of 1888. See LAND CHARGE.

Registrar and Merchants. In Admiralty actions, the Court itself does not enter into details relating to the assessment of damages or matters of account, unless the amount in dispute is small or unless the matter can easily be settled by the Court, and whenever in the course of a cause it becomes necessary that the Court should be informed upon such questions, it is usual to direct a reference to the registrar, assisted by merchants, usually two in number. After hearing the evidence the registrar draws up his report. If either party objects to it, he must file a notice of objection. The objection is argued either on motion (which is now the usual course) or on "petition in objection"; if it is sustained or held to be valid the report is overruled: otherwise it is confirmed. As to the practice, see R. S. C., Ord. 56.

Registrar-General of Births, Deaths and Marriages. The officer at the head of the system under which all births, deaths and marriages in the country are registered. His office was established by the Births and Deaths Registration Act, 1836, s. 2.

Registrar of Affidavits. This was an office in the Court of Chancery which was held in 1798 by the two daughters and co-heiresses of the second Earl of Northington, who between them received about £410 a year, out of which they paid £90 a year to a deputy for the actual performance of their duties. The duties consisted "in filing and registering affidavits and making office copies thereof" (*Commons Committees Reports*, Vol. 13, p. 233). The office was abolished by the statute 2 & 3 Will. 4, c. 111, s. 1.

Registration. The reference to this title on p. 499, col. 1, should be to REGISTER OF WRITS AND ORDERS, *supra*.

Registration of Births. This is now governed, as regards children born alive in England or Wales, by the Births and Deaths Registration Act, 1874, ss. 1-8. Where any such child is born, the father (unless—see s. 7—the child be a bastard), or mother, or in their default, the occupier of the house in which the child is born, or any person present at the birth, or the person having charge of the child, must, within forty-two days after the birth give the specified particulars as to the birth to the registrar of births, deaths and marriages, and sign the register (s. 1). If default be made by all such persons, any of them must, on receipt of a written requisition from the registrar, attend and give the required particulars as to the birth (s. 2).

Any person finding or having charge of a new-born child which has been exposed, must within seven days of the child being found, give to the registrar any particulars known to

him concerning the birth of the child (s. 3). Failure to comply with any of the above-mentioned sections is an offence punishable on summary conviction (s. 39). No fee is to be charged for registration unless the registrar attends at a private residence to register the birth (s. 4). The making to the registrar of false statements regarding the required particulars as to birth is an offence punishable either summarily or on indictment (Perjury Act, 1911, s. 4). Forgery in connection with the registration of births is dealt with in the Forgery Act, 1913, s. 3 (2); and also in the unrepealed part of s. 40 of the Act of 1874.

The particulars required to be registered as to a birth are the date, the Christian name and sex, the name of the father, the name and the maiden name of the mother, the rank or profession of the father, the signature, description and residence of the informant, the date of registration, the signature of the registrar, the baptismal name of the child if added after registration (Births and Deaths Registration Act, 1836, Sch. A), and the place of birth if the Registrar-General directs that it be entered (Births and Deaths Registration Act, 1837, s. 8); but in the case of an illegitimate child the name of any person is not to be entered in the register as being the father, unless such person acknowledges himself to be, and unless both he and the mother request that he be entered as the father, and unless both he and the mother sign the register (Act of 1874, s. 7).

The unrepealed parts of the Acts of 1836 and 1837 are to be construed as one with the Act of 1874 (Act of 1874, s. 52).

Births on His Majesty's ships at sea are dealt with in s. 37 of the Act of 1874, which section is repealed as regards other ships; and births on other British ships at sea are dealt with in the Merchant Shipping Act, 1894, s. 245.

Parochial registers of birth are evidence. So also, under the Non-Parochial Registers Act, 1840, except as stated in that Act, are non-parochial registers deposited in the General Register Office.

See also BIRTHS, NOTIFICATION OF.

Registration of Burials. The effect of the Burial Act, 1853, s. 8, the Cemeteries Clauses Act, 1847, s. 32, the Registration of Burials Act, 1864, ss. 1, 7, the Burial Laws Amendment Act, 1880, ss. 10, 11, Sch., the Burial and Registration Acts (Doubts Removal) Act, 1881, s. 2, and the Burial Act, 1900, s. 9, is that every burial in every cemetery or burial ground, must be registered in the register to be kept by the person or body having control of each cemetery or burial ground. Such registers are evidence (Act of 1853, s. 8; Act of 1847, ss. 32, 33; Act of 1864, s. 5). Forgery of, or of copies of, any such register is felony (Forgery Act, 1913, s. 3 (2)).

Cases occasionally occur of persons directing that their bodies be buried in ground not generally used for interments. No express provision would appear to be made for such cases: but the effect of s. 17 of the Registration of Births and Deaths Act (as amended by the Coroners Act, 1887, ss. 18 (6), 45, Sch. III.), is that a coroner's order or a registrar's certificate of the registration of death is normally issued before burial takes place, and that anyone who "performs any funeral or religious service" at a burial must notify the coroner or the registrar if he does not receive such order or certificate; and so the State keeps in touch with all burials on land. Now and then it happens that someone directs that his body be taken out to sea and sunk in deep water without any religious or other ceremony; and the law, having never contemplated any such proceeding, has never made provision for the registration of such "burial." It has, however, provided specially for the case of cremation (q.v.).

Registration of Business Names. See BUSINESS NAMES.

Registration of Deaths. Every death in England, and the cause thereof, must be registered in accordance with the Births and Deaths Registration Acts, 1836 to 1874 (Births and Deaths Registration Act, 1874, s. 9). Where the death occurs in a house, the nearest relatives present at the death or in attendance during the last illness, and, in default of such relatives, the nearest relatives in the sub-district; and, failing them, the persons present at the death and the occupier of the house, and, failing them, all inmates of the house and the persons causing the body to be buried, are bound to give the required particulars to the local register within five days of the death, and to sign the register (s. 10). Where the death occurs or a body is found elsewhere than in a house, all relatives having knowledge of the required particulars, and, failing them, every person present at death or finding or taking charge of or burying the body, is bound, within five days after the death or finding, to give the particulars to the registrar and to sign the register (s. 11). If a person bound to inform the registrar sends to him within the five days a written notice of the death and a medical certificate of its causes, then the specified particulars

may be furnished within fourteen days instead of five days after the death (s. 12). After fourteen days and within twelve months from the death, the registrar may, if the death has not been registered, serve a written notice to register upon any person who is under an obligation so to do (s. 14). No fee is payable upon registration, unless the registrar has to attend at a house other than a public institution (s. 15). No death can be registered after twelve months without the written authority of the Registrar-General (s. 15). Where an inquest is held, the coroner must report the result to the registrar; and no other person is under any obligation to give information regarding the death (s. 16). Where a registered medical practitioner has attended the deceased, he is bound, unless there is an inquest, to give, without fee, a certificate of the cause of death to some person bound to register, and such person is bound, under a penalty, to deliver it to the registrar (s. 20). The making of false statements to the registrar concerning death is a misdemeanour (Perjury Act, 1911, s. 4); and forgery in connection with such registration is felony (Forgery Act, 1913, s. 3 (2)).

The registration of deaths occurring on King's ships is provided for by the Registration of Births and Deaths Act, s. 37: those occurring on merchant vessels are registered pursuant to s. 254 of the Merchant Shipping Act, 1894.

Entries in parochial registers, and (Non-Parochial Registers Act, 1840) in non-parochial registers, are evidence of burial and, inferentially, of death.

Registration of Designs. This is now governed by the Patents and Designs Act, 1907, ss. 49, 53, 58, 93. See DESIGNS.

Registration of Marriages. Canon 70 of 1603 directs that in every church and chapel there shall be kept one parchment book in which the "minister" is to enter particulars of christenings, weddings and burials, and that the minister shall annually send copies of each year's entries to the ecclesiastical officer of each diocese who is known as the registrar. The Parochial Registers Act, 1812, imposed on the minister the statutory duty (s. 1) of keeping three separate registers of the like events in (s. 5) an iron chest, and (s. 8) of sending copies annually to the registrar of the diocese. All the foregoing registers are evidence under the Non-Parochial Registers Act, 1840, s. 6, when deposited in the General Registrar Office.

Under the series of enactments mentioned in the next paragraph the "minister" remains in some cases the registering officer, but the registrar of the diocese is out of the matter altogether, and the official to whom each registering officer is ultimately responsible is the Registrar-General of Births, Deaths and Marriages.

Every marriage solemnised in England must be registered as follows:—(1) In the case of a marriage according to the rites of the Church of England, by the clergyman who solemnised it (Births and Deaths Registration Act, 1836, s. 30; Marriage Act, 1836, s. 30; Extra-Parochial Places Act, 1857, s. 10); (2) in the case of a marriage according to the practice of the Society of Friends, by the local registering officer (as defined by the Births and Deaths Registration Act, 1836, s. 30) of that Society, whether he be present at the marriage or not (*ib.*, s. 31; Society of Friends Act, 1860, s. 2); (3) in the case of a marriage according to Jewish usage, by the secretary of the husband's synagogue (Births and Deaths Registration Act, 1836, s. 31) who need not be present, but must be certified in accordance with the Births and Deaths Registration Act, 1836, s. 30, or the Marriage Registration Act, 1856, s. 22; (4) in the case of a marriage in a registered building according to the usages of Christians not being members of the Church of England collectively known to the law as nonconformists—by the registrar, if present (Marriage Act, 1836, s. 23), or, if he is absent, by the person duly authorised by the governing body of the building (which includes, as regards Roman Catholic buildings, the bishop or vicar-general of the diocese—see the Marriage Act, 1898, s. 1 (3)), or by some person duly authorised in respect of some other registered building in the same registration district (Marriage Act, 1898, ss. 6 (3), 7 (1)); and (5) in the case of a marriage in the office of a superintendent registrar, by the registrar who solemnises it (Marriage Act, 1836, s. 23). The Acts above mentioned contain numerous provisions as to the machinery of registration in each of the above cases.

Marriages solemnised abroad, including (Foreign Marriage Act, 1892, s. 12) those on board H.M.'s ships on foreign stations, are (*ib.*, s. 9 (2)) to be forthwith registered by any marriage officer (q.v.) by or before whom they are celebrated. The master of every British ship required to keep an official log, must register therein the particulars of any marriage taking place on board (Merchant Shipping Act, 1894, ss. 240 (6), 253 (1) (viii.).

Anyone who makes any false statement as

to the particulars to be registered in connection with a marriage in order to have it entered in a register is guilty of misdemeanour (Perjury Act, 1911, s. 3 (1) (*b*)). Forgery of any marriage register or of any certified copy thereof is felony (Forgery Act, 1913, s. 3 (2)).

Registration of Title. See LAND REGISTRIES.

Regius Professor. A holder of one of the five professorships in Divinity, Greek, Hebrew, Civil Law and Physic founded at Cambridge by Henry VIII. in 1540, or of the five similar professorships founded by him at Oxford in 1546.

Regni populi. A name anciently applied to the inhabitants of Surrey and Sussex and to the maritime parts of Hampshire.

Regnum non est divisibile (*Co. Litt.* 165). (The kingdom is not divisible.) Quoted in connection with the rule that the king's daughters do not take as coparceners, and that the eldest succeeds in default of issue male.

Re-grant. In the law of real property, when, after a person has made a grant, the property granted comes back to him (*e.g.*, by escheat or forfeiture) and he grants it again, he is said to re-grant it. The phrase is chiefly used in the law of copyholds. Thus, before the Fines and Recoveries Act, 1833, one mode of barring an entail in copyholds was a preconcerted forfeiture of the lands by the tenant, followed by a re-grant from the lord to him in fee simple (see ESTATE TAIL). As to other re-grants of copyholds, see GRANT.

Regrating was the offence of buying corn, etc., in any market and selling it again in the same place, so as to raise the price: the statute 7 & 8 Vict. c. 24, made this no longer an offence. See ENGROSSING; FORESTALL; JOURNEY-HOPPER.

Regress is used principally in the phrase "free entry, egress and regress" (q.v.), but it was also used to signify the re-entry of a person who has been disseised of land: see, for instance, *Co. Litt.* 318B. See RIGHT OF ENTRY.

Regula est, juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere (*D.* 22, 6, 9). (It is the rule, that every man is prejudiced by ignorance of law, but is not prejudiced by ignorance of fact.) Compare IGNORANTIA FACTI, ETC.

Regulæ generales. The General Rules, those being the rules as to procedure and practice which were issued from time to time by the various Courts. Since the Judicature Acts they have been replaced by the Rules of the Supreme Court.

Rehabere facias seisinam. (That you cause him to have seisin again.) It was a judicial writ which issued when the sheriff, upon the *habere facias seisinam* (q.v.), had delivered more than he ought.

Rehabilitation. The re-enabling of a spiritual person to exercise his functions when he had incurred a disability. This was effected by a brief or other instrument from the Pope down to 1533: the obtaining from Rome of any such instrument was then prohibited by the statute 25 Hen. 8, c. 21.

Re-hearing is where a cause or matter which has been already adjudicated upon is re-argued and a second judgment pronounced. The term is derived from the practice of the Court of Chancery, in which an appeal from a Vice-Chancellor or the Master of the Rolls to the Lord Chancellor was looked upon as a re-hearing, because they were the delegates of the Chancellor and members of the same Court; the same practice was kept up when the Court of Appeal in Chancery (q.v.) was created.

Since the Judicature Acts every appeal to the Court of Appeal is by way of re-hearing (Ord. 58, r. 1). This means that the Court of Appeal is in the same position as if the re-hearing were the original hearing, and hence it may receive evidence in addition to that before the Court below, and it may review the whole case and not merely the points as to which the appeal is brought. See APPEAL.

The Criminal Appeal Act, 1907, s. 9, empowers the Court of Criminal Appeal to treat an appeal as a rehearing to such extent as they think fit; but evidence that was not given at the trial is not commonly received, this power notwithstanding.

Re-insurance is where an insurer procures the whole or part of the sum which he has insured (*i.e.*, contracted to pay in case of loss, death, etc.) to be insured again to him by another person. This is commonly done in the case of marine insurance, either when the insurer is a company, because the sum which they have insured is larger than the constitution of the company allows, or for some similar reason; or, in the case of an underwriter, because subsequent events make the risk greater than he originally intended. See INSURANCE.

Under the statute 19 Geo. 2, c. 37, s. 4, re-insurance was illegal except in certain cases, but contracts of re-insurance were legalised by the Inland Revenue (Stamp Duties) Act, 1864, s. 1; and the Marine Insurance Act, 1906, s. 9 (1), provides that an insurance may be effected in respect of the interest of an insurer under a contract of marine insurance.

Re-insurance is most common in the case of maritime risks, but fire insurance companies can and do re-insure against the risks run under their policies, and under s. 20 of the National Insurance Act, 1911, the Insurance Commissioners can re-insure approved societies in respect of liabilities as to maternity benefit.

Re-issuable Notes. A bank note, duly stamped or issued by a bank authorised to issue unstamped notes, may be re-issued any number of times without any liability for stamp duty on such re-issue (Stamp Act, 1891, s. 30, replacing s. 46 of the Stamp Act, 1870). The Bank of England never avails itself of this privilege.

Rejoin; Rejoinder. In pleading, the rejoinder is the pleading which follows the reply (q.v.) It cannot be delivered without leave (Ord. 23).

Relate; Relation. The doctrine of relation is that by which an act is made to produce the same effect as if it had occurred at an earlier time. Thus, an adjudication in bankruptcy relates back to the act of bankruptcy on which the receiving order (q.v.) was made, or, if more acts of bankruptcy than one are proved, to the first act of bankruptcy committed within three months before the presentation of the petition (Bankruptcy Act, 1914, s. 37 (1)) so as to invalidate all alienations, executions, etc., made or suffered during that period fraudulently or in favour of any person having notice of the act of bankruptcy. So if a person has an authority to enter on land, and after entering he abuses the authority, he becomes a trespasser *ab initio*, because his wrongful act relates back to the time of his entry. See AB INITIO; OMNIS RATIHABITIO, ETC.; PROTECTED TRANSACTIONS.

Relation; Relator. In the practice of the Chancery Division of the High Court, where an action by way of information (q.v.) is instituted in the name of the Crown, but not immediately concerning its rights, the proceedings are taken on the relation, that is, on the narrative or information, of a private person, whose name is inserted in the proceedings, and who is called the relator. Thus, in the case of a public nuisance, anyone may act as relator in proceedings by the Attorney-General. A "relator for the purpose of answering costs" is sometimes introduced in proceedings directly concerning the rights of the Crown, in order to obviate the injustice arising from the Crown's immunity from costs in ordinary suits.

See EX RELATIONE.

Relativorum, cognito uno, cognoscitur et alterum (*Cro. Jac.* 539). (Of things relating to each other, one being known, the other is also known.) Thus when you know the cause you also know the inevitable result.

Release.—I. In the most general sense of the word, "a release" (Shepp. Touch. 320), "is the giving or discharging of the right or action which a man hath or may have or claim against another man or that which is his." Thus, if A. commits a breach of a contract which he has entered into with B., and B. gives up the right of action which he has thus acquired, he is said to release A. So a person may release property from a charge. See DISCHARGE.

When two persons have had several dealings, from which demands and rights of action, whether mutual or not, have arisen or may in future arise, a release of all such demands and rights of action is called a general release. When trustees or executors have wound up an estate they usually require a release from the persons beneficially entitled before handing over or dividing it, in order to clear themselves of responsibility: but neither a trustee nor an executor has any right to make the giving of a release a condition precedent to the performance of his duty.

A release sometimes takes place by operation of law Thus, if A. covenants not to sue B. for a debt which he owes him, this operates as a release, because otherwise A. might sue B. for the debt, and then B. might sue A. for breach of his covenant, which would cause a circuity of action. But if A. has a right of action against two or more, and covenants with one of them not to sue him, this does not operate as a release of the others, though an express release to him would have that effect (see JOINT). For the same reason, although a bankrupt who obtains his discharge, or a debtor who effects an arrangement with his creditors, is thereby released by operation of law from all his debts, with certain exceptions (see DISCHARGE), this does not release persons with whom he is jointly liable for any debt.

II. In the law of real property, a release is where a person having a right, title or claim in or to land, gives it up to someone else who has an interest in the land of such a nature as to qualify him for taking the right so relinquished. (See CONVEYANCE.) Examples are given below. A release may enure (that is, operate or take effect) in four ways. First, by way of *mitter l'estate*, that is, by giving or transferring an estate or interest; as where one

of three joint tenants releases his interest in the land to one of his co-tenants. Secondly, by way of *mitter le droit*, that is, by giving or transferring a right of entry or similar right, as where a person who has been disseised of land releases his right of entry to the disseisor and thus vests the full title to the land in him. If a man is disseised by A. and B. and releases his right to A., this vests the title in A. to the exclusion of B. This is sometimes called a release by way of entry and feoffment, because it produces the same effect (for some purposes) as if the disseisee had entered and then made a feoffment. Thirdly, by way of extinguishment; thus, if the owner of a seignory which involves a service due from the tenant in fee releases it to the tenant, this operates by way of extinguishment, because the tenant cannot have a service to receive from himself. This is sometimes called a release by way of extinguishment as against all persons, as opposed to a release by which the right passes to the releasee, and which, therefore, operates by way of extinguishment only so far as the releasor is concerned, and does not otherwise affect the existing interests in the land; thus, if a man is disseised and the disseisor makes a feoffment to two men in fee, and the disseisee then releases to one of the feoffees, this shall enure to both of them by way of extinguishment. Fourthly, by way of creation or enlargement of an estate, as where the owner of the fee simple in land grants a lease for years and afterwards releases his estate to the lessee and his heirs so that the fee simple is vested in the lessee. But, in the case of release by creation or enlargement, the releasee must be in possession or seisin of the land to make such a release effectual: an *interesse termini* is not sufficient. See LEASE AND RELEASE.

III. In Admiralty actions, when a ship, cargo or other property has been arrested, the owner may obtain its release by giving bail or paying the value of the property into Court; upon this being done he obtains a release, which is a kind of writ under the seal of the Court, addressed to the marshal, commanding him to release the property. See BAIL; ADMIRALTY.

Relegation was said to be where a man was temporarily exiled or banished by special Act of Parliament (Co. Litt. 133A). It was never a civil death. See ABJURATION.

Relevancy; Relevant. In the law of evidence, a fact is said to be relevant when it is so connected, directly or indirectly, with a fact in issue in an action or other proceeding, that evidence given respecting it may reasonably be expected to assist in proving or disproving the fact in issue. Thus, if A. is tried for the murder of B. by poison, the fact that he had previously been guilty of other crimes would generally be irrelevant; but the fact that, before B.'s death, A. procured poison similar to that by which B. died would be relevant, and so also would the fact that A. had administered to G. poison of the same kind as that alleged to have been administered to B.; and where the question is whether C. murdered his wife D., the fact that E. and F., to whom also he had been married, had each, like D., been found drowned in a bath in circumstances almost identical with those proved in the case of D., has been held relevant as tending to disprove the theory of accident. So if the question in an action is whether A., the owner of land adjoining a river, owns the entire bed of it or only half the bed at a particular spot, the fact that he owns the entire bed a little down the river is relevant.

The question of the relevancy of a fact to a given inquiry is of importance, because evidence is not admissible to prove an irrelevant fact. A fact is relevant when it supports the contention of one of the parties. The use of the word in this sense seems to be modern.

Relics. The statute 3 Jac. 1, c. 26 authorised justices to search the houses of Papists for "reliques" of saints and to destroy any which they might find.

Relicta verificatione. Down to 1856, a defendant who had pleaded a plea which was demurred to, could withdraw it by entering a *relicta verificatione*. See COGNOVIT.

Relief.—I. In the law of real property, a relief was a payment which a tenant of full age was bound to pay to the feudal lord on succeeding to the land by descent. By the common law it was an incident to the service of every free tenure, and is hence sometimes called relief-service; but owing to the gradual extinction of seignories in ordinary cases, reliefs are now rarely met with, except where freehold land is held of the lord of the manor at a yearly quit rent of sufficient value to make it worth collecting, in which case the relief consists of one year's rent. This is a socage-relief: reliefs incident to knight's service were abolished by the statute 12 Car. 2, s. 24. A relief lies in render (q.v.) and may be distrained for. See INGRESSUS.

Improper reliefs differ from ordinary reliefs in being derived from custom, prescription or express reservation. A prescriptive relief is

one which is presumed to have been reserved by a deed which has been lost (see LOST GRANT; PRESCRIPTION). A customary relief (or relief-custom) is due by the special custom of some manors on every descent, and in some cases on every purchase, of freehold tenements held of the manor, and in some manors the customary fines in respect of copyholds are called reliefs (see FINE). Reliefs due by custom and prescription are not recoverable by distress unless the custom or prescription warrants it.

A relief, like a heriot (q.v.) may, be extinguished, at the instance of either the lord or the tenant, under the Copyhold Act, 1894, s. 2.

The word is derived from the Norman-French, *relef, reliefve, relief* (late Latin, *relevium, relevatio*), because, it is said, the heir paid it to take up (*relevare*) his inheritance.

II. Every action (except actions for discovery and a few others) is instituted for the purpose of obtaining relief, that is, satisfaction for a past injury, or the prevention of a threatened injury, or the enforcement or protection of a right. Thus on the Chancery side a plaintiff usually claims not only a particular kind of relief (" specific relief "), but also " general relief," by asking for such " further or other relief " as the nature of the case may require, and he may ask for " alternative relief " : that is, he may mention two kinds of relief, and ask for one of them, *e.g.*, either specific performance or damages.

III. As to the relief of paupers, see POOR LAW.

Relieve, in feudal law, was to depend: thus the seignory of a tenant *in capite* was said to relieve of the Crown, which meant that the tenant held of the Crown. The term is not common in English writers.

Religious Orders. The Roman Catholic Relief Act, 1829, ss. 28-37, is directed not merely against Jesuits (q.v.), but also against all " other religious orders, communities, or societies of the Church of Rome bound by monastic or religious vows " : and it is a dead letter in the case of all such orders, etc. See JESUITS.

Relinquishment. See HOLY ORDERS; RESIGNATION.

Rem. See IN REM.

Remainder. A remainder is defined (*Co. Litt.* 93A) as " remnant of an estate in lands or tenements, expectant upon a particular estate created together with the same at one time." Thus, if A., a tenant in fee simple, grants land to B. for life, and after B.'s decease to C. and his heirs, C.'s interest is termed a remainder in fee expectant on the decease of B.

As regards its incidents, a remainder chiefly differs from a reversion (q.v.) in this, that between the particular tenant (B.) and the remainderman (C.) no tenure exists, from which it follows that no rent-service can be incident to a remainder. See RENT; TENURE.

In the above instance, the remainder is said to be vested (that is, vested in interest), because it is ready to come into possession the moment B.'s estate happens to determine; in other words, the existence of B.'s estate is the only thing which prevents C.'s estate from coming into possession; and, therefore, whenever B. dies, the land passes to C., if he is living, or, through his representatives, to his heir or devisee if he is dead.

If, however, A. had limited the land after B.'s estate to the heir of C., a living person, the remainder would not be ready to come into possession at once, because until C. dies there is no one to take the remainder; for *nemo est hæres viventis*, and during C.'s life there is no such person as his heir. So if land is limited to B. for life, and after his death, if C. should then be living, to D., D.'s remainder is not vested, because its coming into possession depends not merely on the determination of B.'s estate, but on it's determination during C.'s life: hence such a remainder is termed a contingent remainder, being (see Fearne *Cont. Rem.* 216) " a remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate." (See CONTINGENT.) When the uncertainty is removed, the remainder becomes vested. The possibility that a remainder may never come into possession at all, does not of itself make the remainder contingent: thus, if land be granted to A. for life, remainder to B. for life, B.'s remainder is vested, although he may die before A., and consequently never come into possession.

Every contingent remainder was formerly liable to destruction by the determination of the particular estate before the remainder vested: thus, suppose land to be limited to A., a bachelor, for life, and after his death to his eldest son and the heirs of his body, and in default of such issue to B. and his heirs, then if A. before the birth of a son, forfeited or surrendered his life estate, or merged it by purchasing B.'s remainder in fee, the con-

tingent remainder to his son would have been destroyed. To prevent this, the following plan was adopted in settlements and similar instruments giving contingent remainders to the children of a tenant for life:—Following the limitation of the estate to the tenant for life, an estate, to commence on the determination of his estate by any means during his life, was given to certain persons and their heirs during his life as trustees to preserve the contingent remainders, for which purpose they were, if necessary to enter on the premises, but to permit the tenant for life to receive the rents and profits during the rest of his life. These were called trusts to preserve contingent remainders. But the Real Property Act, 1845, s. 8, enacted that contingent remainders should not in future be liable to be destroyed by the forfeiture, surrender or merger of any preceding estate of freehold; and now by the Contingent Remainders Act, 1877, no contingent remainder created by any instrument executed after the 2nd August, 1877, can be destroyed by the determination of the particular estate before the remainder vests, if the remainder would have been valid as a springing or shifting use, or executory devise, or other limitation, had it not had a sufficient estate to support it as a contingent remainder. Thus, if land is limited to A. for life, with remainder to his eldest son who shall attain twenty-one, and A. dies before any of his sons attains twenty-one, the remainder will nevertheless take effect as soon as a son attains twenty-one. If, however, land is limited to A. for life, with remainder to his eldest son who shall attain twenty-five, the remainder will only take effect if the son attains twenty-five before A.'s death, because such a limitation could not take effect as an executory limitation by way of use or trust, being contrary to the rule against perpetuities. So that the only difference now between a contingent remainder and an executory devise is, that the former is not affected by the rule against perpetuities, if it vests before the particular estate determines. But an equitable contingent remainder is void for remoteness if it infringes the rule against perpetuities.

Contingent remainders are subject to a rule resembling that against perpetuities, for an estate cannot be given to an unborn person for life, followed by any estate to any child of such unborn person; in such a case the estate given to the child of the unborn person is void. See PERPETUITY.

A remainder may be vested in interest and contingent as to the property comprised in it. Thus if land is limited to A. for life, remainder to the children of B. in common in fee, each child of B. on his birth in A.'s lifetime takes a vested remainder in an undivided share, the amount of which is contingent on the number of children of B. who may be born in A.'s lifetime. If the remainder is to the children of B. now or hereafter to be born, whether in the lifetime of A. or not, the time for ascertaining the persons to take will also be the death of A., unless the remainder is limited by an instrument executed after the passing (on 2nd August, 1877) of the Contingent Remainders Act, 1877, in which case the time will be the death of B.

Cross-remainders arise when land is given in undivided shares to two persons, A. and B., for particular estates, in such a manner that upon the determination of the particular estates in A.'s share, the whole of the land goes to B., and *vice versâ*, the remainderman or reversioner not being let in till the determination of all the particular estates in both shares. Perhaps the commonest instance of cross-remainders occurs in an ordinary settlement of land (whether by deed or will), where, after limiting an estate tail in the land to each of the sons of the tenant for life in succession, provision is made for the failure of male issue by limiting it to the daughters in equal shares as tenants in common in tail, with a clause that on the death of any daughter without issue, her share (both original and accrued) shall go to the other daughters in tail, so that if all the daughters but one die without issue, that one takes everything, and the remainderman or reversioner in fee takes nothing unless and until they all die without issue.

Remand. To remand a defendant or prisoner in a proceeding before a magistrate or justices of the peace, is to adjourn the hearing to a future date, and to order that the defendant, unless admitted to bail, be kept in custody in the meantime.

Remanentiam, Ad. An estate *ad remanentiam* meant in the time of Glanville, an estate in fee simple.

Remanent pro defectu emptorum. (They are left on my hands for want of buyers.) This is the return made in an appropriate case by a sheriff with regard to goods taken under a *fieri facias*.

Remanet, in the practice of the King's Bench Division, is an action which has been set down for trial at one sittings, but has not come

on, so that it stands over to the next sittings.

Remanet in custodia (Rem. Custod.). (He remains in custody.) In the time of imprisonment on mesne process, an action in the King's Bench was properly commenced, when the defendant was in custody, by an entry of "*rem custod.*" in the marshal's book.

Remedy is the means by which the violation of a right is prevented, redressed, or compensated. Remedies are of four kinds: (1) by act of the party injured, the principal of which are defence, recaption, distress, entry, abatement and seizure; (2) by operation of law, as in the case of retainer and remitter; (3) by agreement between the parties, *e.g.*, by accord and satisfaction, and arbitration; and (4) by judicial remedy, *e.g.*, action or suit. (See the various titles.) The last are called judicial remedies, as opposed to the first three classes, which are extra-judicial. As to the distinction between a remedy and a right, see LIMITATION; and as to equitable injuries and equitable remedies, see INJURY.

The minute variation (from the standard of weight and fineness prescribed for coins) which is permitted by the Coinage Acts is known as a remedy. See the Coinage Act, 1870, s. 3, Sch. I. See TOLERANCE.

Remembrancers. Anciently there were, in the Exchequer, three officers known as Remembrancers: the King's Remembrancer, the Lord Treasurer's Remembrancer, and the Remembrancer of the First Fruits. The office of the last-mentioned (who was concerned with the First Fruits: see Queen Anne's Bounty) was abolished by the Queen Anne's Bounty Act, 1838, s. 1. The office of the Lord Treasurer's Remembrancer (who was concerned with the collection of the hereditary revenues of the Crown) was abolished by the enactment which in 1833 abolished the office of the Clerk of the Pipe (q.v.), who had kept the accounts of those revenues.

The King's Remembrancer performed duties connected with recoveries of penalties and debts due to the Crown; he kept in his office the documents relating to the passing of lands to and from the Crown; and he had functions in connection with English Bills (see BILL OF COMPLAINT). The Queen's Remembrancer Act, 1859, s. 1, provided that he should cease to exist as a separate officer, and that he should be a Master of the Court of Exchequer. Under the Judicature Act, 1873, s. 77, he was attached to the Supreme Court, and under the Judicature (Officers) Act, 1879, ss. 6, 8, he was transferred to the Central Office and made a Master of the Supreme Court. His duties as King's Remembrancer now consist mainly of certain functions connected with the selection of sheriffs (q.v.) and swearing in of the Lord Mayor of London, the trial of the Pyx (q.v.), and acknowledgments of homage for Crown lands (Queen's Remembrancer Act, 1859, s. 43).

The Remembrancer of the City of London is an official receiving £1,500 a year. He represents the corporation before parliamentary committees; he accompanies the sheriffs when they wait on the Sovereign in connection of any address from the corporation; and he is bound to attend all Courts of aldermen and common council when required.

Remise. In old releases the operative words were "remise, surrender and quit claim," all of which, according to Coke, were of practically the same meaning (*Co. Litt.* 264B).

Remit; Remission. As in the majority of cases, a Court of Appeal sits merely to decide questions of law, and has not the machinery to carry its decisions into effect, it is obliged, when it reverses or varies the decision of an inferior tribunal in such a way as to make further steps necessary, to remit or send back the case to the inferior tribunal, so that such steps may be taken there as are necessary to carry the decision into effect. Thus, supposing a Court gives judgment for the defendant in an action in which, if the plaintiff were successful, inquiries would have to be taken, then, if the House of Lords or Privy Council reverses that decision and gives judgment for the plaintiff, it remits the case to the lower Court in order that the inquiries may be taken, or it may remit the case with directions as to the relief to be given to the plaintiff. This is sometimes called remitter.

In Privy Council practice, on a cause being remitted to the inferior Court, a document called a remission is in some cases (*e.g.*, ecclesiastical appeals) required to be issued. It is a kind of writ commanding the judge to resume and proceed with the cause.

Remitted Actions. The County Courts Act, 1919, s. 1 (which replaces s. 65 of the County Courts Act, 1888), provides that the High Court may remit to the County Court any action brought in the High Court (1) where the plaintiff's claim is founded either on contract or on tort and the amount claimed does not exceed £100, and whether the counterclaim, if any, does or does not exceed £100; (2) where the only matter to be tried is a counterclaim, founded either on contract or on tort, and the

amount involved does not exceed £100; and (3) where the plaintiff's claim is for the recovery of land (with or without rent or mesne profits) against a tenant whose title has been determined and the action could have been brought (see ss. 138, 139 of the Act of 1888) in the County Court. Whether any of these actions are or are not to be remitted is in the discretion of the Court.

The County Courts Act, 1919, s. 2 (which replaces s. 66 of the Act of 1888), provides that the High Court may remit to the County Court any action founded on tort where an affidavit by or on behalf of the defendant avers that the plaintiff has no visible means of paying costs, unless the defendant satisfies the judge that the averment is not correct or unless he gives security for costs. But here also the matter is in the discretion of the judge.

Remitter, says Littleton, "is where a man hath two titles to lands or tenements, viz., one a more antient title, and another a more latter title; and if he comes to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthie title" (*Litt.* § 659); but the second title must come to him without his own act or default (*Co. Litt.* 347B). Thus, if A disseised B, tenant in fee simple of land, and then made a lease of the land to him by deed poll for a term of years, and B entered under the lease, this entry was a remitter to B; that is, he regained his original estate in fee simple, and was not considered as entitled to the land by virtue of the lease to him by A. But if B took an estate from A by indenture, this would estop him from claiming any estate, except that given him by the deed, and would thus prevent a remitter, because, as Coke says, a "deed indented is the deed of both parties, and therefore as well the taker as the giver is concluded" (*Co. Litt* 363B). See RECONTINUANCE; REMIT.

Remittitur damna. When one of the parties to an action in the Court of King's Bench obtained judgment for damages which he was either not entitled to, or was willing to abandon, he made an entry on the record called a *remittitur damna*, by which he gave up or remitted those damages. Thus, if the jury gave greater damages than the plaintiff had claimed by his pleading, the mistake was rectified by entering a *remittitur damna* as to the excess. So when the defendant, in an action of replevin, obtained judgment by default, he was entitled not only to a return of the goods replevied, but also to damages for being deprived of them, which had to be assessed by a writ of inquiry; but the damages being usually trifling in amount, they were generally remitted, in order to save the expense of a writ of inquiry.

Remittitur of Record. Formerly when a judgment of the Court of King's Bench was affirmed or reversed in the Court of Exchequer Chamber on a writ of error, there was a "*remittitur* of record" (or transmission of the transcript of the record) to the King's Bench to be entered up at the foot of the judgment there. This was made unnecessary by a Rule of Court made in 1834.

Remoteness. Certain rules of the law of real property are directed against the validity of dispositions which take effect at too remote a period. The most important are the rules against perpetuities (q.v.) and against a possibility on a possibility (q.v.).

Where the damage sustained by a plaintiff is neither the necessary nor the probable result of the conduct of a defendant, the plaintiff cannot recover in respect of such damage; it is said to be too remote.

Remoto impedimento emergit actio (*Wing.* 20). (An impediment being removed, an action emerges.) Quoted by Wingate in support of various obsolete propositions such as: "A man shall not have execution against the king's debtor that hath a protection, because the king ought to be paid first; yet if the plaintiff will undertake to pay the king's debt, he shall have judgment and execution for both the debts."

Removal. The casual poor of a parish (as opposed to its "settled" poor) are only entitled to relief in that parish until they can be removed to their parish of birth or settlement, under an order of removal made by two justices of the peace, unless they have acquired the status of irremovability. See POOR; SETTLEMENT; IRREMOVABILITY.

An action commenced in the Central Office of the High Court may be removed from London to a district registry for any sufficient reason (Ord. 35, r. 17), and an action proceeding in a district registry may be removed into the Central Office by the defendant as of right at any time between appearance and defence (Ord. 35, r. 13), except in certain cases where the writ has been endorsed under Ord. 14, r. 6 (*ib.*). See JUDGMENT.

A cause may be removed from a County Court into the High Court by writ of *certiorari* if a judge of the High Court thinks it a fit case to be tried in the High Court upon such terms as to costs and giving security as

the judge may think fit (County Courts Act, 1888, s. 126). As to the removal of judgments, see JUDGMENT.

A cause may be in general removed from an inferior Court not of record into the High Court by *certiorari* (q.v.); and s. 90 of the Judicature Act, 1873, provides that, where the relief claimed exceeds that which can be given by such inferior Courts as are mentioned in ss. 88, 89, then the High Court may remove a cause from any such Court into the High Court.

Remover. Formerly this meant the transfer of a suit or cause from one Court to another.

Render. To render is to yield or pay, as to render a rent. So some kinds of heriots are said to lie in render, that is, the tenant is bound to give the heriot to the lord. Hence profits are divided into profits lying in render, or those which the tenant is bound to yield or pay, such as rent, and profits lying in prender, which the person entitled to must take for himself. See PROFIT; PRENDER.

Where a mine, quarry or the like is leased, it is sometimes stipulated that a certain proportion of the minerals gotten shall be delivered to the lessor by way of rent or royalty. This is called a render. It is a royalty in kind. See ROYALTY.

Renewal. See WRIT OF SUMMONS.

Renounce; Renunciation. A renunciation is a document by which a person appointed by a testator as his executor, or a person who is entitled to take out letters of administration to the effects of an intestate in priority to other persons, renounces or gives up his right to take out probate or letters of administration; the document is filed in the registry. The word renunciation is also commonly used as synonymous with disclaimer (q.v.) where the latter word is used generally in connection with a right, interest, or office. See RETRACTATION.

Rent is a periodical payment due by a tenant of land or other corporeal hereditament; it is usually payable in money, but it may also be reserved in fowls, wheat, spurs or the like. When land is let free of rent and the landlord wishes to be able to obtain an acknowledgment of the tenancy when necessary, a nominal rent is frequently reserved, consisting of one peppercorn a year to be paid when demanded.

Rents are of several kinds:—

(i) Rent service is always incident to tenure; in other words, it is that which is due when one man holds land of another by fealty (or any other service) and rent; as where a man holds land of another in fee simple at a rent reserved before the Statute Quia Emptores (see FEE FARM), or where an owner of land in fee at the present day leases it to another for 99 years at a yearly rent. In the latter case the rent is an incident to the reversion of the lessor or reversioner and passes with it if he grants it to another. Payment of a rent service may be enforced by distress (q.v.). "It is called a rent service because it hath some corporall service annexed unto it, which at least is fealty" (*Co. Litt.* 142A), but at the present day fealty is never exacted. If the rent is severed from the reversion (as where either is assigned without the other) it becomes a rent in gross. A rack rent is a rent of the full annual value of the land, or near it. When land is leased to a person on condition that he erects certain buildings on it, the rent reserved (which is small in comparison with the rent of the land when built on) is called the ground rent. When the lessee has erected the building, he may sub-let at a rack rent (calculated at an amount sufficient to repay to him with a profit the amount expended in building the house and also to cover the ground rent), or he may take from the sub-lessee a fine amounting to not much less than what he has expended on the house, reserving a rent a little larger than the ground rent; this is generally called an improved ground rent. When a mine, quarry, brick-work or similar property is leased, the lessor usually reserves not only a fixed yearly rent but also a royalty or galeage rent, consisting of royalties (q.v.), varying with the quantity of minerals, bricks, etc., produced during each year. In this case the fixed rent is called a dead rent. A footage rent is a rent payable for every acre a foot thick of minerals, and so in proportion for a greater or less thickness. A spoil-bank rent is a sum payable according to the quantity of rubbish from a mine deposited on land belonging to the lessor.

(ii) A rent charge is where a rent is payable in respect of land to a person who has no reversion in it, and a right to distress is given him by express agreement between the parties: as where a man (since *Quia Emptores*) conveys land in fee to another, reserving to himself and his heirs a certain rent with the right of distress, or if a man seised of land grants to another a yearly rent issuing out of it with a clause of distress.

(iii) Formerly where a rent (not being a rent service) was reserved or created without a

clause of distress, the grantee had no remedy by distress, and hence the rent was called a rent seck (*redditus siccus*, a dry rent). So if the owner of a rent service granted the rent to another, reserving the fealty to himself, the grantee had only a rent seck. But this distinction between rent charges and rent seck was abolished by the Landlord and Tenant Act, 1730, s. 5, which gave the owner of every rent seck a right of distress for it: so that every rent created by grant is now in effect a rent charge.

Under the Tithe Act, 1836, a rent charge varying with the price of corn was substituted for the right to take tithes in kind. An extraordinary tithe rent charge was also imposed by the same Act in respect of highly productive land, such as hop-grounds and market gardens, but this rent charge was abolished as from 25th June, 1886, by the Extraordinary Tithe Act, 1886, and is now replaced by an annual payment calculated at the rate of 4 per cent. on the capital value of the rent charge, as ascertained by the Ministry of Agriculture and Fisheries (Extraordinary Tithe Acts, 1886 and 1897), such annual payment being recoverable as was the rent charge. See TITHES.

Before the statute *Quia Emptores*, a person could convey land in fee simple to be held of him and his heirs, reserving a rent service from the grantee. Some instances of rents thus created still exist either under the name of fee farm rents (see FEE FARM) or of quit rents, so called because in consideration of their payment the tenants are quit or discharged of all other services. Such rents are now found almost only in manors, being frequently due both by the freeholders and the copyholders: they are sometimes called customary rents, being due by custom; or rents of assise, from being fixed in amount; and those of the freeholders are frequently called chief rents (q.v.). The fee farm rents payable to the Crown for the lands of religious houses were known as rents resolute.

Every rent, except a rent service incident to a reversion, is an incorporeal hereditament. It may belong to a man in fee, or in tail, or for any other estate.

The Conveyancing and Law of Property Act, 1881, s. 44, gives a right of entry and distress for the recovery of any annual sum charged on land or the income of land (not being rent incident to a reversion); and s. 45 of the same Act provides that quit rents, chief rents, rent charges and other perpetual charges on land may be redeemed at prices to be fixed by what is now the Ministry of Agriculture and Fisheries. See ANNUITY; APPORTIONMENT.

See ACCUSTOMED RENT.

Rental Value. For the purposes of mineral rights duty (q.v.) this means (1) the actual rent paid for the right to work minerals where that right is leased; (2) the rent which could be obtained for the right to work minerals which the proprietor is himself working; and (3) in the case of any mineral wayleave, the rent actually paid (Finance (1909-10) Act, 1910, s. 20 (2)).

Rentcharge. See RENT.

Rents; Rents and Profits. A devise of the "rents and profits," or "rents," of land is, in the absence of evidence to the contrary, a devise of the land itself.

Renunciation. See RENOUNCE.

Reparatione facienda, De. This was a writ to enforce the duty of carrying out repairs. Thus it lay (for one who had a right of passage over a bridge) against another man who was under a duty to keep the bridge in repair but had failed to do so.

Repatriation. This is said to take place when a person regains a nationality which he had abandoned or lost (See STATUTORY ALIEN). It is the reverse process to expatriation (q.v.).

Repeal. The abrogation of a statute or part of a statute by a subsequent statute. It may be either express, that is to say, specially enacted, or it may be implied, that is to say the necessary result of the subsequent enactment. There is, moreover, the *quasi* repeal effected by the Statute Law Revision Acts: see S. L. R. Where an Act passed after 1850 repeals a repealing enactment, the enactments which had been repealed by the repealing enactment do not, in the absence of express provision, revive; and where an Act passed after 1850 repeals an enactment in whole or in part and substitutes other provisions, then the repealed enactment remains in force until the substituted provisions come into operation (Interpretation Act, 1889, s. 11). Where any Act passed after 1889 repeals and re-enacts earlier enactments, with or without modification, then references in any other Act to the repealed enactments are to be taken as references to the re-enacted enactments (*ib.*, s. 38 (1)).

Repellitur à sacramento infamis (*Co. Litt.* 158). (An infamous person is not to be permitted to take the oath.) Coke is speaking of the challenge (q.v.) of a juror *propter delictum*: the maxim could also have been used to illustrate the old law under which

"infamy" resulted from conviction of perjury, forgery, gross cheats, etc., and disqualified a man from being a witness.

Repleader. In the old common law practice judgment of repleader was given in an action when the pleadings had failed to raise a definite and material issue. (See PLEADING.) Its effect was that the pleadings were begun again at the point where the defect first occurred.

Replegiare. To replevy: see REPLEVIN.

Replegiare de averiis. Another name for the writ *Averiis replegiandis, De.* (q.v.).

Replegiari facias. The writ of replevin (q.v.).

Replevin; Replevisor; Replevy. Replevin is the remedy which may be adopted by a person in almost all cases in which chattels are unlawfully taken from him; but it is not often adopted, except in cases of wrongful distress for rent or damage feasant, when it is brought for the purpose of trying the legality of the distress: it may also be used to decide a question of title to land or other hereditaments. See DISTRESS.

The first step is for the replevisor or distrainee (*i.e.*, the person whose goods have been distrained) to obtain a replevy of the goods, which he does by procuring from the registrar of the County Court of the district a warrant directing the high bailiff to cause the goods to be delivered to him: this is granted on the replevisor giving security (usually a bond with two sureties) to commence and prosecute an action for the wrongful taking against the distrainor, either in the County Court or in the High Court, and to return the goods to the distrainor if a return shall be adjudged. Formerly, if this action (which is called an action of replevin) was brought in one of the superior Courts of common law, proceedings up to declaration were the same as in an ordinary action, the replevisor being the plaintiff (see ACTOR); but where, as was usually the case, the defendant claimed a return of the goods replevied, the subsequent pleadings were peculiar. If the defendant insisted that they were lawfully taken by him, he either made "avowry," *i.e.*, he "avowed" taking the distress in his own right, and set forth the reason of it (as for rent in arrear), in which case he was known as an avowant, or he made "conusance" or "cognisance," *i.e.*, he "acknowledged" the taking, but insisted that it was lawful, as he did it by the command of one who had a right to distrain; the plaintiff's next pleading was called a plea in bar, that of the defendant a replication, and so on. Under the present practice, the pleadings in an action of replevin are similar to those in ordinary cases. (See PLEADING.) If the plaintiff obtains judgment, he retains the goods and is awarded damages for the unlawful taking; if the defendant is successful, he obtains judgment for a return of the goods taken, formerly enforceable by a writ called *de retorno habendo*, now by a writ of delivery (q.v.) See also RECAPTION.

As to the practice in replevin see ss. 133-137 of the County Courts Act, 1888, and Order 34 of the County Court Rules.

Originally, the only remedy in cases of wrongful distress was the writ of replevin (*replegiari facias*), under which the proceedings were in the sheriff's County Court; but by 52 Hen. 3, c. 21, the sheriff was authorised to grant replevins without this writ. If the goods had been eloigned (q.v.), the replevisor might have a writ of *capias in withernam* (q.v.), under which the sheriff took the distrainor's own goods as a punishment. If the plaintiff in an action of replevin was nonsuited he was allowed a writ of second deliverance, under which the goods were again delivered to him; but if he was nonsuited in the second action, the defendant obtained a writ of return irreplevisable, which was an absolute bar to the plaintiff's claim. The two latter proceedings were impliedly abolished by the abolition of non-suits (q.v.). See GAGE; GAGER DE DELIVERANCE.

Replevisable. Goods for which replevin proceedings can be taken are said to be replevisable. Where goods are delivered under a contract, they are irreplevisable, because a wrongful taking is essential to replevin proceedings.

Replevish. Synonymous, as regards goods, with replevy: anciently used also as meaning to let one to mainprise (q.v.) upon surety.

Replication. In matrimonial suits in the Probate, Divorce and Admiralty Division, the pleading delivered by the petitioner to the answer of the respondent was formerly termed the replication and is now known as either the replication or the reply.

In proceedings by English information (q.v.) on the Revenue Side of the King's Bench Division, the replication is the pleading delivered in reply to the defendant's answer or (as it would elsewhere be called) defence.

Under the old practice of the Chancery and common law Courts, the replication was the pleading filed or delivered by the plaintiff in answer to the defendant's plea or answer. In Chancery, however, the replication had for many years been merely a joinder of issue

(q.v.), special replications (which were used where the defendant introduced new matter into his plea or answer) having been superseded by the practice of amending the bill. See AMENDMENT; PLEADING; REPLY.

Reply. In its general sense, a reply is what the plaintiff, petitioner or other person who has instituted a proceeding says in answer to the defendant's case.

In an action in the High Court the reply is the pleading delivered in answer to the defendant's statement of defence. Usually the reply is delivered by the plaintiff, but if the defendant has set up a counter-claim against any person other than the plaintiff, the answer of that person to the counterclaim is called a reply, although it is rather in the nature of a statement of defence. In simple actions, instead of a reply, there is usually a mere joinder of issue (q.v.)': except in Admiralty actions a reply cannot be delivered without leave (Ord. 23).

When a case is tried or argued in Court, the speech or argument of the plaintiff in answer to that of the defendant is called his reply. See TRIAL; OPENING; RIGHT TO BEGIN.

In criminal cases, where any witness, other than the prisoner, is called for the defence, or any document is put in for the defence, counsel for the prosecution is entitled to reply (28 & 29 Vict. c. 18, s. 2; Criminal Evidence Act, 1898, s. 3), that is to say, to address the jury after counsel for the prisoner has addressed them. But where either of the Law Officers appears personally, he may, if he thinks fit, reply even though no witness, other than the prisoner, has been called for the defence.

As to affidavits in reply, see AFFIDAVIT.

Under the old practice of the Chancery and common law Courts, to reply was to file or deliver replication (q.v.).

Report.—I. When a question is referred to a referee under the Arbitration Act, 1889, his decision is given in the form of a report to the Court. See REFER; REFEREE.

As to reports in Admiralty actions, see REGISTRAR AND MERCHANTS.

Under the old practice in Chancery, when an inquiry was referred to the Master, he gave the result in a report, which was filed in an office, called for that reason the Report Office. In more modern practice, chief clerks' certificates, petitions, etc., were also filed there (see CERTIFICATE). After the abolition of the Masters in Chancery (q.v.), the Report Office was added to that of Records and Writs by the Court of Chancery Act, 1855, and has now been amalgamated with the Central Office (q.v.).

The judgment of the Judicial Committee of the Privy Council on an appeal or reference is technically a report to the King in Council, giving the opinion of the Court on the question involved in the case. See JUDICIAL COMMITTEE; REFER.

Report, Law. A published account of a legal proceeding, giving a statement of the facts, the arguments on both sides, and the reasons the Court gave for its judgment. Reports by barristers published with the reporter's name or otherwise sanctioned by persons of standing in the profession are cited in argument as precedents, and are of more or less authority according to the reputation of the reporter and of the judges whose decisions are reported. Regular law reporting appears to have commenced about the end of the thirteenth century with the Year Books (q.v.). It was carried on by a succession of reporters in the various Courts until 1865. In that year the Council of Law Reporting commenced a series of reports covering all the superior Courts which took over the regular reporters. But this series is not official, as is sometimes thought. "All reports made by gentlemen of the Bar and published on their responsibility are equally regular. There is no superiority in the reports of the Council of Law Reporting. Counsel are as much entitled to use the one as the others" (*per* Lord Esher, M.R., 3 *T. L. R.* 641). The oldest existing series of reports covering all the superior Courts is the *Law Journal Reports*, which have been published continuously since 1822. A complete list of the various reports will be found in the list of abbreviations at the commencement of this Dictionary. For information regarding the authority of the various old reports, see Wallace, *The Reporters*, 1882; continued to 1865 by Fox, *Handbook of the English Law Reports*, 1913. See also Daniel, *History and Origin of the Law Reports*, 1884; Maxwell, *Complete List of British and Colonial Law Reports, with Bibliographical Notes*, 1913.

Report Office. See REPORT.

Reposition. In the law of the forest, this meant the re-afforesting of forest lands which had been made purlieu. (q.v.).

Representation.—I. One person is said to represent another when he takes his place. Thus, an agent represents his principal, an heir his ancestor, an executor his testator, and an administrator the intestate whose estate he administers. (See REPRESENTATIVE.) As to

parliamentary representation, see HOUSE OF COMMONS; HOUSE OF LORDS.

In the law of intestacy, the rule of representation is that rule of law by which the children or other descendants of a deceased person, who, if he had lived, would have taken property by virtue of an intestacy, stand in his place, so as to take the property which he would have taken if he had lived. As regards realty, the rule of representation is universal, namely, that all lineal descendants represent their ancestor. See the fourth canon of descent, in DESCENT.

There is also another and, in the opinion of many, an incorrect use of the term representation in the law of descent. If A. acquires land by purchase and dies intestate, leaving two daughters, B. and C., his land descends to them as coparceners. If B. dies intestate, leaving a son D., the question arises to whom will her share descend? The Inheritance Act, 1833, says that in case of a descent, the title to inherit shall be traced from the purchaser, who in this case is A., so that the provisions of the Act would seem to be fulfilled by making B.'s share descend to C. and D. in equal shares, D. standing in the place of his deceased mother. No doubt this result would be absurd, the obvious conclusion being that the legislature did not contemplate such a case. It has (14 *Jur.* 214) been decided that in the case above supposed B.'s share descends to D. No reasons are given for the decision except that the same result would have followed under the old law, and that the Act did not intend to make an alteration. In addition to this reason, however, it is argued by Mr. Joshua Williams that the case is governed by the rule of representation, D. standing in the place of his deceased mother. It is quite clear that the rule of representation referred to is not the ordinary rule stated in the text, because that only applies to the case of a person pre-deceasing the intestate. It is true that under the old law, in certain cases, if a coparcener died intestate her share descended to her issue, but this was by virtue of a special rule which has never been adequately explained.

In the case of personalty, representation only takes place (i) where the intestate has left children and grandchildren by deceased children, in which case the grandchildren stand in their parents' place; and (ii) where the intestate has left a mother, or a brother, or sister, and also nephews or nieces by a deceased brother or sister, in which case the nephews or nieces take their parent's share. See DISTRIBUTION; NEXT OF KIN; PER CAPITA.

II. In the law of contracts, a representation is a statement or assertion made by one party to the other, before or at the time of the contract, of some matter or circumstance relating to it. In ordinary contracts a representation as such has no legal effect, even if untrue, and even if the person making it knew it to be so. Thus if a vendor of goods simply represents them as worth a high price, while in fact they are not, this gives the purchaser no right either to rescind the contract or to bring an action of damages. (See CAVEAT EMPTOR.) But a representation may take the form of a warranty or condition, or may amount to fraudulent or negligent misrepresentation, all of which have important legal effects. (See the respective titles.) Contracts of insurance being contracts *uberrimæ fidei* (q.v.), representations which relate to material facts connected with an insurance must be complied with, but a substantial compliance is sufficient. Thus where the assured asserted that his vessel mounted twelve guns and twenty men, and the ship sailed with less than this number of men and guns, but carried in addition a number of boys and swivels, which made her force in fact greater than that stated, it was held that, this being a representation and not a warranty, and having been substantially complied with, the underwriters were liable (3 *B. & S.* 751).

III. Under the Public Worship Regulation Act, 1874 (q.v.), complaints against incumbents, etc., on matters within that Act, are made by a document called a representation, containing a statement of the nature of the complaint, and signed by the person or persons making it.

Representative is a person who represents or takes the place of another. The executor or administrator of a deceased person is called his personal representative, because he represents him in respect of his personal estate; and where there is realty the executor or administrator is called the real representative (q.v.) because, since 1897, he represents the deceased as regards the realty. So also an heir was formerly sometimes called the real representative of his ancestor, because down to 1897 he represented the ancestor as regards realty.

As to representative peers, see HOUSE OF LORDS.

A representative action or suit is one brought on the Chancery side by a member of a class of persons on behalf of himself and the

other members of the class. In the proceedings before judgment the plaintiff is, as a rule, *dominus litis* (q.v.). and may discontinue or compromise the action as he pleases; therefore a member of the class who is dissatisfied with an order obtained by the plaintiff cannot appeal against it; he may, however, apply to be made a defendant, and, in a proper case, might obtain the conduct of the proceedings. As soon as judgment is given for the plaintiff he ceases to be *dominus litis*, and all members of the class who are willing to contribute to the expenses of the suit may join in, and take the benefit of, the subsequent proceedings.

Representative Body. See WELSH CHURCH.

Reprieve, in criminal procedure, is the withdrawal of a sentence for a time, whereby the execution of it is suspended. It may be granted either by the Court or by the Crown. In two cases the Court is bound to grant a reprieve, namely, where a female prisoner under sentence of death is pregnant, and where a prisoner becomes insane after judgment. (See JURY.) On a conviction for murder no reprieve can be granted by the Court, whose only function is to pronounce sentence of death (Offences against the Person Act, 1861, s. 2). In the case of such other capital felonies as there still are, and in the case of minor offences, the Court may record (but not pronounce) sentence, and this is equivalent to a reprieve: but the adoption of this procedure is obsolete, the matter being almost invariably left to abide either the decision of the Court of Criminal Appeal or that of the Crown; the Crown can, of course, reprieve as well as pardon or commute.

Reprimand. Discharge, with reprimand, on payment of costs, is the penalty for a first offence against the Wild Birds' Protection Act, 1880: see s. 4.

In the Army an officer may be sentenced by court-martial to "reprimand" or "severe reprimand" (Army Act, s. 44 (g)), while a non-commissioned officer may be summarily reprimanded, severely reprimanded, or admonished by the commanding officer (*ib.*, s. 46 (1): King's Regulations, 493 (vi), (vii), 499). In the Navy "severe reprimand" or "reprimand" is one of the punishments which may be inflicted by the sentence of a court-martial (Navy Discipline Act, 1866, s. 52 (8)). Reprimand by the captain of a ship is confined to chief and other petty officers and lower ranks (King's Regulations (for the Navy) 797).

Reprisal is the same thing as recaption (q.v).

Reprisals, in international law, include every species of means, short of war, employed by one State to procure redress for an injury committed by another State. The term therefore includes embargo and retorsion (q.v.). Reprisals are negative when a State refuses to fulfil an obligation, and positive when they consist in seizing the subjects or property of the offending State. The reprisals above described were sometimes called special, as opposed to general reprisals, which were only used in time of war, and consisted in authorising any individuals whatever, whether suffering from private grievances or not, to act against the subjects of the opposed State. See PRIVATEERS; LETTERS OF MARQUE.

The word is now more generally used as meaning acts of retaliation during the course of a war for breaches of the usages of war. Thus the execution of prisoners by one belligerent might result in like steps being taken by the other belligerent.

Reprise. A deduction, such as a rentcharge, from the gross annual rent or value of lands. The word is used chiefly in such expressions as "above all reprises": thus the Augmentation of Benefices Act, 1831, s. 1 (now repealed), speaks of "the clear yearly value, above all reprises, of the rectory."

Reprobata pecunia liberat solventem (9 *Rep.* 79). (Money refused frees him who tenders it.) This maxim is not to be taken literally: see TENDER.

Republication of a will or codicil is where it is re-executed by the testator. Re-execution may take place when the will or codicil has been revoked and the testator wishes to revive it. Such re-publication as is effected by re-execution is now the only re-publication known to the law. See PUBLICATION; REVIVAL.

Repugnant means contrary to or inconsistent with. Thus, if A. grants land to B. in fee, upon condition that he shall not alien it, this condition is "repugnant to the estate," that is, inconsistent with the nature of a fee simple, and therefore void.

As to repugnant gifts by deed or will, see INCONSISTENCY.

Reputation. In the law of evidence, matters of public and general interest, such as the boundaries of counties or parishes, rights of common, claims of highway, etc., are allowed to be proved by general reputation, *e.g.*, by the declarations of deceased persons made *ante litem motam*, by old documents, etc., notwithstanding the general rule against secondary evidence. So evidence of the conduct of a family, as proved by a surviving

member of it, is admissible in questions of pedigree.

As to a manor by reputation, see MANOR.

As to personal reputation, see LIBEL; CHARACTER; SLANDER.

Reputed Ownership. The doctrine of reputed ownership was first introduced into the bankrupt laws by the statute 21 Jac. 1, c. 19, s. 11, with the object of protecting the creditors of a trader from the consequences of the false credit which he might acquire by being suffered to have in his possession, as apparent owner, property which does not really belong to him. If the circumstances in which the property is in the trader's possession, order or disposition, are such as to lead to a fair and reasonable inference amongst persons likely to have dealings with him, that he is the owner, and if the real owner is a consenting party, then on the trader becoming bankrupt, that property is divisible among his creditors. The doctrine does not apply to property comprised in a registered bill of sale, nor does it apply in cases where (as in the case of furniture held by a hotel keeper upon the hire purchase system) there is a custom or usage of trade rebutting the presumption of ownership. (See ORDER AND DISPOSITION.) The Bankruptcy Act, 1883, s. 44 (iii), made the doctrine applicable to all goods possessed, etc., by any bankrupt, whether a trader or a non-trader in his trade or business; and that enactment is reproduced in s. 38 (2) (*c*) of the Bankruptcy Act, 1914. It is still inapplicable to a bankrupt who carries on no trade or business.

See TRUE OWNER.

Request. A request may give rise to an implied or tacit promise. Thus, if I request a workman to do work for me, I tacitly agree to pay him for it. And if I request a person to do something for me which would not of itself give rise to a tacit promise to pay him, and after he has done it I promise to pay him, this promise couples itself with the antecedent request and makes a good contract.

In some cases a request will itself be implied by the law (*quasi*-request): thus, if A. has been compelled to do that which B. is legally compellable to do, the law will imply a request by B. to A. to do the act. See CONTRACT; PROMISE; QUASI-CONTRACT; also COURTS OF REQUEST; LETTERS OF REQUEST.

Request Note. A document requesting the removal of dutiable goods from one warehouse (q.v.) to another: see the Customs Consolidation Act, 1876, s. 88.

Requisitions on Title. When a contract for the sale of real property has been entered into, and the vendor has delivered the abstract of title to the purchaser, the latter goes through the abstract, and if there are any defects in or questions as to the vendor's title, he puts his objections into writing and delivers them to the vendor. These are called requisitions, because they require the vendor to remove the defects or doubts pointed out. A formal contract of sale always stipulates that the requisitions shall be made within a certain time after the delivery of the abstract. It also generally stipulates that the title shall commence with a certain document, and that no requisitions shall be made in respect of the earlier title; not unfrequently it is provided that no requisitions shall be made in respect of some specified defect in the title which the vendor is unable to remove. See VENDORS AND PURCHASERS.

Rere-county. A supplementary County Court anciently held by the sheriff on the day after the County Court. It was for, amongst other things, the receipt of the various moneys which the sheriff collected for the king.

Reredos. An ornamental facing, of stone or wood, on the wall at the back of the Communion Table. Its use is, *per se*, not illegal: but particular forms of reredos are of doubtful legality.

Rerum progressu offendunt multa, quæ in initio præcaveri seu prævideri non possunt (6 Rep. 40). (In the course of events many mischiefs arise which at the beginning could not be guarded against or foreseen.) Coke cites this as illustrating the danger of innovations in the common law.

Rerum suarum quilibet est moderator et arbiter (*Co. Litt.* 223). (Everyone is the manager and judge of his own affairs.) That is to say, a man may do as he likes with his own. But Coke had not anticipated the course of recent legislation.

Res, in an Admiralty action *in rem*, is the ship, cargo or other property proceeded against. See ACTION; ARREST; BAIL; IN PERSONAM.

Res accessoria sequitur rem principalem. (The accessory follows the principal.) In the Roman law this corresponded to our *Accessorium non*, etc.

Re-sale is where a person who has sold goods or other property to a purchaser sells them again to someone else. Sometimes (and in sales by auction under conditions of sale invariably) a vendor reserves the right of re-selling if the purchaser commits default in payment of the purchase-money, and in some cases (*e.g.*, on a sale of perishable articles)

the vendor may do so without having reserved the right.

Resceit. Where a cause had been commenced between two persons the admission of a third person to plead was anciently known as *resceit* or reception. The admittance of a plea by one or the other of the parties to a cause was also known as *resceit*.

Rescind; Rescission. Rescission, or the act of rescinding, is where a contract is put an end to by the parties, or one of them. Thus, a contract is said to be rescinded where the parties agree that it is to be at an end, or where one of the parties to a contract is entitled to avoid it by reason of the act or default of the other party, and elects to do so, either by giving notice of his election to the other party, by setting up the invalidity of the contract as a defence to proceedings taken by the other party, or by instituting proceedings to have the contract judicially set aside (judicial rescission). (See RESTITUTIO IN INTEGRUM.) The most frequent instances of rescission by one party occur where there is fraud or mistake (see FRAUD; MISTAKE), and in certain cases where there is a continuing contract, and a failure of performance by one of the parties in an essential part of the contract. Thus, if a person who has contracted to supply a certain quantity of goods every month fails to supply a sufficient quantity the first month, the other party is entitled to rescind the contract. Similarly, if a party to a contract fails to comply with a condition precedent, or by his own act makes the performance of the contract impossible, the other party may in general rescind the contract. See AFFIRM.

Rescous. The same as rescue (q.v.).

Rescriptum principis contra jus non valet (*Reg. Civ. Jur.*). (The prince's rescript avails not against legal right.) And so in our law no grant of the Crown can prejudice the course of justice, and the Crown can make no grant in violation of the common law or of the rights of the subject. See PROCLAMATIONS, ROYAL.

Rescue.—I. Rescue is the act of forcibly and knowingly freeing a person from an arrest or imprisonment. In the case of a person arrested in a civil action, the rescuer was liable to an action by the plaintiff for the loss thereby caused to him, and to attachment for contempt of Court. In the case of a prisoner arrested in criminal proceedings, the punishment for a rescue varies with the degree of the offence for which the person rescued was in custody. See ESCAPE.

II. Rescue also signifies the act of forcibly taking back goods which have been distrained and are being taken to the pound. If the distress was unlawful, the owner may lawfully rescue the goods; if the distress was lawful, the rescuer is liable to an action by the distrainor. (See DOUBLE DAMAGES; POUND; POUND-BREACH.) A rescue in law is where the cattle, etc., come again into the possession of the owner without his act, and he refuses to deliver them to the distrainor.

Reseiser. Where the king, or other lord of whom lands were held, resumed possession on the ground that the tenant had failed to comply with the conditions of his tenure there was said to be a *reseiser*.

Reservation, says Sheppard's *Touchstone*, "is a clause of a deed whereby the feoffor, donor, lessor, grantor, etc., doth reserve some new thing to himself out of that which he granted before [by the same deed]. And this doth most commonly and properly succeed the *tenendum*." See DEED.

The commonest instance of a reservation is the rent in an ordinary lease.

A reservation, in the proper sense of the word, cannot, it seems, be validly made in favour of a stranger to the deed, but the same effect may be produced by a grant, covenant or condition in favour of the stranger, for he need not, since 30th September, 1845 (Real Property Act, 1845, s. 5), be a party to the deed. And it is said that a reservation to a stranger creates an implied covenant in his favour.

As to the difference between a reservation and an exception, see EXCEPTION.

Reservation of Points of Law. See COURT FOR CROWN CASES RESERVED.

Reserve Forces (Army). These are (1) The Army Reserve, consisting of men who have served in the regular forces; when called out it is liable to serve anywhere (Reserve Forces Act, 1882, s. 3); (2) the Militia (q.v.); (3) the Army Motor Reserve; and (4) the Reserve of the Territorial Army.

Men of the Army Reserve enter it on the expiration of their service with the regular forces either by force of their original enlistment (Army Act, s. 90) or by special enlistment (Reserve Forces Act, 1882, s. 4) or by re-engagement (*ib.* s. 4). The officers are retired officers of the regular forces who have volunteered for the Army Reserve: see various provisions of the Pay Warrant, 1909.

The Army Motor Reserve consists of motor-car owners who place their cars and themselves at the disposal of the Army Council for six days in each year, and who may be called

to army service during a national emergency: see provisions of the Pay Warrant, 1909.

Under the Territorial and Reserve Forces Act, 1907, s. 7 (6), the Crown is empowered to make orders and regulations constituting a reserve division of the Territorial Force (now the Territorial Army). This (consisting of three parts, known respectively as the Territorial Army Reserve, Technical Reserve, and the National Reserve) has been raised pursuant to the Provisional Regulations for the Territorial Reserve, issued with Special Army Order of 21st May, 1910, and the National Reserve Regulations, 1911, issued with Special Army Order of 7th March, 1913.

Reserve Forces (Naval). These consist of (1) the Royal Naval Reserve; (2) the Royal Fleet Reserve; and (3) the Royal Naval Volunteer Reserve. The Royal Naval Reserve, drawn from seafaring men generally, was constituted pursuant to the Royal Naval Reserve (Volunteer) Act, 1859, s. 1; service is for five years (s. 2) unless terminated earlier by the naval authorities (s. 14), and members are liable to actual service whenever called on (s. 4; Naval Reserve (Mobilization) Act, 1900, s. 1).

The Royal Fleet Reserve is a branch of the Royal Naval Reserve formed in 1900 pursuant to the Naval Reserve Act, 1900: it consists of men who have served in the Navy, the Marines, or other branches of the Government service.

The Royal Naval Volunteer Reserve, for admission to which no special seafaring qualification is required, was constituted pursuant to the Naval Forces Act, 1903. Members are in many respects on a footing analogous to that of members of the Territorial Army.

Re-settlement. Where land has been settled on a marriage, and the eldest son has attained twenty-one during his father's lifetime, and thus acquired an estate tail in remainder, it is usual for the father as protector (q.v.) to give his consent to the son's estate tail being barred on condition of a re settlement being made. The terms of such a re-settlement generally are that the estate of the son shall be cut down to an estate for life, with remainder to his children (if he should marry) successively in tail, subject to the usual provisions for his widow and younger children (see JOINTURE; PORTION), while the father on his side charges his life estate with an annuity for the son and a jointure for the son's widow, as a provision for them before the son's estate comes into possession. Such a re-settlement will not, however, be supported in equity, if it appears from the unfairness of its terms or otherwise not to have been understood by the son. See DISENTAILING DEED; ESTATE TAIL; OVERREACHING CLAUSE; SETTLEMENT.

Res gestæ are the facts surrounding or accompanying a transaction which is the subject of legal proceedings or, to put it another way, all facts so connected with a fact in issue as to introduce it, explain its nature, or form in connection with it one continuous transaction. The phrase is chiefly used in the law of evidence, the rule being, that evidence of words used by a person may be admissible (notwithstanding the general rule against derivative evidence), on the ground that they form part of the *res gestæ*, provided that the act which they accompanied is itself admissible in evidence, and that they reflect light upon or qualify that act. Therefore, where a woman went to be examined by a surgeon with a view to effecting a policy of insurance on her life, and a few days afterwards stated to a friend that she was ill when she went, and that she was afraid she would not live until the policy was made out, and then her husband could not get the money: evidence of these statements was held admissible in an action on the policy, on the ground that as the woman's previous statements to the surgeon were admissible in evidence, her statements to her friend were also admissible, being part of the *res gestæ*, that is, as following and explaining her previous statements. Similarly on an indictment for treason in leading on a riotous mob, evidence of the cry of the mob is admissible, because it forms part of the *res gestæ*.

Resiant is a resident. The term is chiefly used in speaking of manors. See COURT LEET.

Residence is used in law to denote the fact that a person dwells in a given place, or, in the case of a corporation, that its management is carried on there: thus, if a company is formed in England for the purpose of carrying on a trade (such as mining or manufacturing) in a foreign country, but its business is under the control of a board of directors in England, the company is said to have its residence in England. In the case of a person, residence connotes the idea of home, or at least of habitation, and need not necessarily be permanent or exclusive.

Residence is of importance in several ways: first, as an element in ascertaining a person's domicile (q.v.), and, secondly, as determining whether he is subject to the authorities having jurisdiction or powers within the district where he resides. Thus, where a person who was

born and had long resided in Ireland came over to England, and shortly afterwards filed a petition for judicial separation in the Court of Divorce, it was held that his residence in England was not *bonâ fide*, and was therefore not sufficient to found the jurisdiction of the Court. Residence is, however, chiefly of importance as forming part of some of the qualifications for voting at parliamentary and municipal elections; and in ascertaining whether a pauper has acquired a settlement or irremovability in a parish.

Sometimes a distinction is drawn between actual and constructive residence, the latter term being used to mean that a person has the liberty of returning, and also the intention of returning, whenever he pleases, to the place at which he usually resides, although he may be actually absent from it for some time.

As to the residence of clergymen, see NON-RESIDENCE.

See PLACE OF ABODE.

Residens. Used in Leg. Hen. 1, c. 43, as meaning a tenant bound to live on the land of the lord.

Residue; Residuary. In administering the personal estate of a testator or intestate, the debts, funeral and testamentary expenses and the costs of the administration are first paid, and what remains is the residue in the sense of the net personal estate; then, in the case of a testator's estate, the legacies, annuities, etc., are paid, and what remains is the ultimate residue or residuary estate in the ordinary sense of the word. Sometimes there is a residue within a residue, or a particular residue as opposed to a general residue: as where a fund is given to A subject to the payment thereout of certain legacies, so that if any of those legacies fail, they fall into the particular residue given to A, while the general residue of the estate is given to B.

A residuary bequest, that is, a bequest of the testator's residuary personal estate, passes all the personalty belonging to the testator at his death and not otherwise disposed of, including lapsed legacies. As to the effect of a residuary devise, see DEVISE. Where a testator does not effectually dispose of the residue of his property he dies intestate as to it, and it goes to his heir or next of kin, according to its nature. See INTESTATE.

Resignation is where a parson, vicar or other beneficed clergyman voluntarily gives up and surrenders his charge and preferment to those from whom he received the same. It is usually done by an instrument attested by a notary. See HOLY ORDERS.

Resignation Bonds. A resignation bond is a bond given by a presentee to a benefice, binding himself to resign the benefice either within a certain time, or indefinitely, whenever the patron should require it. Such bonds were formerly held legal, and might be either general or in favour of a specified person or persons, but in 1826 it was decided that all resignation bonds were illegal. Shortly afterwards the Clergy Resignation Bonds Act, 1828, was passed, making valid, in certain cases, resignation bonds in favour of specified persons related by blood or marriage to the patron.

Res integra. A point, governed neither by any decision nor by any rule of law, which must be decided upon principle.

Res inter alios acta. The rule *res inter alios acta alteri nocere non debet* (*Co. Litt.* 132) means that persons are not to be prejudiced by the acts or words of others, to which they were neither party nor privy, and which they consequently had no power to prevent or control. In other words, a person is not to be affected by what is done behind his back. Compare JUSJURANDUM INTER, ETC.

Res ipsa loquitur. (The thing speaks for itself.) This maxim means only that one fact raises a *primâ facie* presumption of another fact unless and until the contrary is proved: thus where a ship under way collides with a ship at anchor, that is *primâ facie* evidence of negligence on the part of the ship which is in motion.

The principle embodied in this maxim applies in an action for damages resulting from the negligence of the defendant, and where it is shown (1) that the thing which caused the accident was under the management of him or of his servants; and (2) that the accident was such that in the ordinary course of things it would not have happened if proper care had been exercised by him or his servants.

Res judicata pro veritate accipitur (*Co. Litt.* 103). A judicial decision is conclusive until reversed, and its verity cannot be contradicted. (See RECORD.) But a judgment *inter partes* only binds the parties and privies to it; as regards other persons, it is *res inter alios judicata*. See IN PERSONAM; JUDGMENT; RES INTER ALIOS ACTA.

Resolution. A resolution is an expression of opinion or intention by a meeting (q.v.).

Under the Companies Acts, resolutions of the members of a company are either ordinary, special, or extraordinary. An ordinary resolution is one passed by a simple majority in number at an ordinary meeting. A special

resolution requires first to be passed by a majority of three-fourths of the members present at a meeting summoned for the purpose, and then to be confirmed by a simple majority at a meeting held for the purpose pursuant to notice between a fortnight and a month from the first meeting (Companies (Consolidation) Act, 1908, s. 69). An extraordinary resolution is a resolution passed by a majority of three-fourths of the members present at a meeting summoned for the purpose; it is, therefore, the same as an unconfirmed special resolution (*ib.*).

In bankruptcy proceedings, an ordinary resolution is one decided by a majority in value of the creditors present (personally or by proxy) at the meeting, and voting on the resolution (Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 167). A special resolution is one passed by a majority in number and three-fourths in value of the creditors present (personally or by proxy) at the meeting, and voting on the resolution (*ib.*).

Resoluto jure concedentis resolvitur jus concessum (*Mackeld.* 179). (The grant of a right comes to an end on the termination of the right of the grantor): unless, of course, a statute intervenes, as in the case of the enactments permitting a tenant for life to lease lands for longer than his own life. Compare NEMO POTEST PLUS, ETC.

Resort, Court of Last. A Court from which there is no appeal. As regards the United Kingdom—or what is left of it—the House of Lords is such a Court: as regards other parts of the Empire the term applies more peculiarly to the Judicial Committee of the Privy Council.

Respectu computi vicecomitis habendo, De. A writ anciently directed to the Treasurer and the Barons of the Exchequer; it commanded them to respite the account of a sheriff.

Respectum, Challenge propter. See JURY.

Res perit domino. Quoted as synonymous with *damnum sentit*, etc. (q.v.), by Blackburn, J., at p. 453 of *L. R.* 7 *Q. B.* See MORA DEBITORIS, ETC.

Respiciendum est judicanti, ne quid aut durius aut remissius constituatur quam causa deposcit; nec enim aut severitatis aut clementiæ gloria affectanda est (3 *Inst.* 220). (A judge should see to it that nothing either more lenient or more severe than the case itself warrants should be done; for no attempt should be made to achieve distinction either by severity or by leniency.) This is a quotation from Bracton, *lib.* 3, *fo.* 105.

Respite is to discharge or dispense with. Thus, a lord is said to respite fealty when he does not exact it from his tenant. (See FEALTY; HOMAGE.) It also means to delay, or a delay. Thus a Court of Quarter Sessions which adjourns an appeal from one sessions to another is said to respite the appeal, and such an adjournment is termed a respite. Respite is also colloquially used as a synonym of reprieve.

Respondeat Ouster, in criminal procedure, was that judgment which was given when a prisoner failed to substantiate a special plea in bar. Thus, if he pleaded *auterfois acquit* and failed to prove it, judgment was given that he "answer over," or plead to the indictment again, in which case he might plead the general issue—not guilty. (See PLEA.) Now a prisoner always pleads "not guilty," in addition to a special plea in bar; and therefore, if he fails to substantiate it, judgment of *respondeat ouster* is not necessary, but the trial proceeds as if no special plea had been pleaded.

In ordinary common law actions, judgment of *respondeat ouster* was formerly given when the defendant pleaded a dilatory plea (*e.g.*, a plea in abatement) and failed, in which case he had to plead in bar. Now, however, pleas in abatement are abolished; the statement of defence contains all the defendant's objections to the action, and they are all tried at the same time; judgment of *respondeat ouster* therefore no longer exists; power, however, is given by Ord. 34, r. 2, to decide questions of law before the trial, and, by Ord. 36, r. 7, to order some questions of fact to be tried before the others. See also FACT.

Respondeat superior (4 *Inst.* 114). (Let the principal answer.) That is to say, that where—but only where and in so far as—there exists the relation of master and servant or of principal and agent, then *Qui facit*, etc., applies. Thus, if I agree with a builder to build me a house on land which in fact is not mine, I shall be liable for the trespass on the land; but I am not liable for any tortious act other than any trespass (such as the dropping of a brick on one lawfully using the highway) which may be done by him or his servants while the work is in progress and in the course thereof.

Respondent is a person against whom a petition—and more especially a petition in the Divorce Court—is presented, a summons issued, or an appeal brought, just as a defendant is a person against whom an action is brought. See CO-RESPONDENT; DEFENDANT; PETITION.

Respondentia was formerly used to denote the hypothecation of the cargo or goods on board a ship as security for the repayment of a loan, the term bottomry being confined to hypothecations of the ship herself; but now the term *respondentia* is seldom used, and the expression bottomry is generally employed whether the vessel or her cargo or both be the security. See BOTTOMRY; HYPOTHECATION; NECESSARIES.

Respondere non debet. (He is not bound to answer.) Under the old system of pleading this was a plea by which, for instance, privilege was claimed.

Responsalis, says Coke, "was he that was appointed by the tenant or defendant [in an action] in case of extremity and necessitie to alledge the cause of the parties absence, and to certifie the Court upon what tryall he will put himselfe." By the common law a party could not appear by attorney without the King's special warrant; when this rule was relaxed *responsales* became obsolete. See ATTORNEY.

Responsions. Annual payments due by the military orders of knights, such as the Hospitallars (q.v.): see the statute 32 Hen. 8, c. 24.

Res sua nemini servit (4 *Macq. Sc. App. Cas.* 151). (No one can have a servitude over his own property.) This maxim of the Roman law applies also in our law. See EASEMENT.

Rest. As regards the taking of accounts, this is defined by Stroud as "a pause at which the net balance between receipts and expenses is ascertained so that interest may be abated or charged according to the finding." There may be rests as between an unpaid vendor and a purchaser who has been let into possession, or as between a tenant for life and a remainderman.

Rest means the reserve fund of a bank, and more especially of the Bank of England.

Restitutio in integrum is a phrase borrowed from the Roman law, where it was applied to cases where a person who, according to strict law, had lost a right, was restored to his original position by the judgment of a Court acting on equitable principles. In English law it is sometimes used to denote the equitable relief which is given in rescinding contracts on the ground of fraud, and in similar cases, where both parties can be restored to their original position.

Restitution. In civil actions, where a defendant appeals and the judgment is reversed, he is entitled to be restored to all he has lost by the execution of the judgment. Under the present practice he may obtain redress by application to the Court or a judge, but a writ of restitution (formerly the only remedy) now lies only where no other remedy is available.

On a prosecution for larceny, embezzlement, etc., where the offender is prosecuted and convicted, the property is to be restored to the owner under, and subject to the exceptions set out in, s. 45 of the Larceny Act, 1916: see also s. 9 of the Criminal Law Amendment Act, 1867. See REVESTING.

Restitutione extracti ab ecclesia, De. This was a writ which lay for one who had been forceably removed from a church in which he had taken sanctuary: it commanded the sheriff to see that such person was put back into the church from which he had been taken.

Restitutione temporalium, De. A writ which anciently issued to the sheriff commanding him to restore to a newly-consecrated bishop the temporalities of a see.

Restitution of Conjugal Rights. Where one of two married persons has without lawful cause withdrawn from living with the other, the latter may present a petition to the High Court in the Probate, Divorce and Admiralty Division praying restitution of conjugal rights, on which the Court will, in a proper case, order the other to return to cohabitation within the time limited by the order. Where a husband fails to comply with such order, and is guilty of adultery, the wife is entitled to a decree for dissolution (q.v.) (Matrimonial Causes Act, 1884, s. 5) provided that she herself comes into Court with clean hands. The modern system of collusive divorce is the result of this state of the law.

Restitution, Writ of. See RESTITUTION.

Restraining Orders, in the practice of the Chancery Division of the High Court, are of two kinds. In the general sense of the term, a restraining order is an order of the High Court (under the original jurisdiction of the Court of Chancery) restraining a person from doing an act, *e.g.*, obstructing ancient lights; such orders are now more commonly called injunctions (q.v.). In its special and more usual sense, a restraining order is an order under the Court of Chancery Act, 1841, s. 4, by which the Bank of England or any other public company may be restrained from permitting the transfer of stock or shares in their books or from paying dividends thereon; the application may be made in a summary way (without the institution of a suit or action) by any person interested in the stock, the object generally being to prevent any dealing

with the stock until the rights of the parties have been ascertained by an action instituted in the regular manner. Either a restraining order or an injunction under the Transfer of Stock Act, 1800, must be obtained unless there be required only such temporary restraint as results from a NOTICE IN LIEU OF DISTRINGAS (q.v.) or a STOP ORDER (q.v.).

Restraint of Marriage. Marriage being an institution encouraged by the State, the general rule is that every contract, the object of which is to restrain a person from marrying at all, is void, and so is an agreement not to marry anyone except a specific person. As to conditions in restraint of marriage, the general rule is that such a condition is valid if it is a condition precedent. As to conditions subsequent, there is some difference in the case of real and personal estate. With regard to real estate, it would seem, on principle, that a condition subsequent is void, if in general restraint of marriage; but is valid if in partial restraint. With regard to personal estate, a condition subsequent in general restraint of marriage is bad, whether there is a gift over or not, while a condition subsequent in partial restraint of marriage is good if there is a gift over, but not otherwise. A condition restraining the second marriage of a man or a woman is valid. A limitation of property until marriage is good, whether to a widow, a widower, or an unmarried person; but in the case of an unmarried person, it seems that to make the restriction valid there must be a limitation over in the event of the donee marrying, because such gifts are construed rather as provisions for the donee until marriage, than as restraints on marriage. So that a condition in restraint of marriage may be void, while the same result might be attained by a limitation. See CONDITION.

Restraint of Princes. See PRINCES, RULERS AND PEOPLES.

Restraint of Ship. Where the part-owners of a ship who represent the majority of interest are about to send her on a voyage against the wishes of the minority of the part-owners, the minority may arrest the ship and have her detained until security is given for her safe return. This is called an action of restraint.

Under s. 30 of the Merchant Shipping Act, 1894, an order may be made restraining any dealing with a ship, or any share therein: but this relates only to the ownership of the vessel and not to her movements.

Restraint of Trade. The general rule is that a man ought not to be allowed to restrain himself by contract from exercising any lawful trade or business at his own discretion and in his own way, the reason being that such a contract tends to deprive the public of the advantage of employing him, and would *pro tanto* create a monopoly (q.v.). A contract in general restraint of trade is one which provides that one of the parties shall not carry on a particular trade at all, or shall carry it on under the control of another person who has a rival business, or the like; such contracts are, as a general rule, void. A contract in restraint of trade may, however, be valid if it is limited to a certain district or area, and is not unreasonable in its terms; thus an agreement, for valuable consideration, not to carry on a business for a term of years, or within a certain district, may be valid. Such a stipulation is not infrequently inserted in an agreement of partnership, where the partner, who is the owner of the goodwill, wishes to be protected against a rival business being set up in his neighbourhood by the other partner when the partnership comes to an end.

Restraint on Alienation is where property is given to a married woman to her separate use without power of alienation. The validity of such a provision is allowed by law as an exception to the general rule that every owner of property is at liberty to alienate it, the object of the exception being to prevent a married woman from being induced by her husband to alienate her property for his benefit. The restraint takes effect only so long as she is married. It is in law the same thing as a restraint on anticipation (q.v.). If a married woman, subject to a restraint on alienation, attempts to alienate, her act has no effect. If a man, who is not an absolute owner but is merely entitled to an interest determinable on alienation, purports to alienate, his act brings into operation the gift over to another person which is always provided for in such a case.

Restraint on Anticipation. See ANTICIPATION.

Restriction. In the case of land registered under the Land Transfer Act, 1875, a restriction is an entry on the register made, under s. 58, on the application of the registered proprietor of the land, the effect of which is to prevent the transfer of the land or the creation of any charge upon it, unless notice of the application for a transfer or charge is sent by post to a certain address, or unless the consent of a certain person or persons to the transfer or charge is obtained, or unless some other thing is done. The object of this provision is

not very clear; it has been suggested that it will be employed " by an owner who is fearful of his estate being conveyed away from him behind his back by means of forgery or personation." See CAUTION; INHIBITION.

Result. In law, a thing is said to result when, after having been ineffectually or only partially disposed of, it comes back to its former owner or his representatives. Thus, if A. conveys land to B. and his heirs to the use of C. for life, on C.'s death the use results to A., that is, A. or his heirs again become the owners of the land, because no disposition is made beyond C.'s life. This is a resulting use. A resulting trust is similar. See TRUST; USE.

When land is directed to be converted into money for a special purpose and the object fails, so that either the sale becomes unnecessary, or (if the sale has taken place) the proceeds are not required to be applied for the purpose directed, then the land or the proceeds of sale (as the case may be) result to the settlor, or his heir, residuary devisee, etc. The same rule applies to the converse case of a conversion of money into land. Thus, if a testator directs his real estate to be sold, and the purposes for which he has directed the conversion, or some of them, fail to take effect (*e.g.*, by lapse), then the real estate, if it has not been sold, or the undisposed-of proceeds if it has, result to the heir or residuary devisee as if the conversion had not been directed; and this is none the less so where the testator has created a " blended fund " (see that title). In the case of a total failure of the objects for which the conversion is directed, there is no difference whether the instrument is *inter vivos* or testamentary; that is, the property results to the author of the trust or his representatives in its original state. Thus, if a testator directs his land to be sold, and the proceeds to be divided between A. and B., and they both predecease the testator, then the land goes to the testator's heir as land. But in case of a partial failure of the purposes for which conversion is directed, the general rule is that where the instrument is one *inter vivos* (*e.g.*, a deed), the property results to the settlor in the condition into which he has directed it to be converted (whether realty or personalty), and therefore devolves as such on his death, unless he has otherwise disposed of it; while, where the instrument is a will, there is a distinction between a conversion of land into money, and money into land; for if a testator directs a conversion of land into money, and some of the purposes fail, that part of the proceeds which is undisposed of results to the testator's heir as money, so that on the heir's death it devolves with the rest of his personalty, unless specially disposed of by him; but if a testator directs a conversion of money into land, and some of the purposes fail, the money which is undisposed of results to the next of kin as personalty, and not as land.

See BLENDED FUND; CONVERSION; RECONVERSION.

Resummons. This is described by Jacob (1749) as " a second summons, or calling of a man to answer an action, when the first summons is defeated by any occasion "; and he adds, " when, by the death, etc., of the judges, they do not come on the day to which they were continued for the trial of causes, such causes may be revived or recontinued by resummons."

The demise of the Crown was an occasion which would have " defeated " the first summons.

Resumption. Used in the statute 31 Hen. 6, c. 7, as meaning the taking again into the king's hands of lands which, upon false suggestion or other error, he had made livery of to anyone or granted by letters patent.

The Agricultural Holdings Act, 1908, s. 23, provides for the resumption by a landlord upon notice to quit, for the purposes mentioned in that section, of lands held upon yearly tenancies; and the Allotments and Small Holdings Act, 1908, s. 46, provides for the resumption by a landowner of land hired from him under compulsory statutory powers.

Re-surrender. Where copyhold land has been mortgaged by surrender, and the mortgagee has been admitted, then on the mortgage debt being paid off, the mortgagor is entitled to have the land reconveyed to him, by the mortgagee surrendering it to the lord to his use. This is called a re-surrender. (Compare RE-CONVEYANCE.) It is not, however, usual for the mortgagee to be admitted; and when he has not been admitted there is no question of a re-surrender, the practice being to enter an acknowledgment of satisfaction on the court rolls.

Retable. A shelf or ledge, at the back and above the level of the Communion Table, upon which ornaments can be placed. Its use has been declared legal by the Privy Council.

Retainer.—I. The right of retainer is the right which the executor or administrator of a deceased person has to retain out of the assets sufficient to pay any debt due to him from the deceased in priority to the other

creditors whose debts are of equal degree. The executor does not forfeit this right by instituting an administration suit in his character of creditor.

II. A retainer is the engagement of a barrister or solicitor to take or defend proceedings, or to advise or otherwise act for the client.

Retainers to solicitors are either general or limited to some particular matter. The retainer must be in writing when the client is to be next friend or a relator (Ord. 16, r. 20), or when the retainer is from a corporation.

Retainers to barristers can be given only by a solicitor. They are divided into general and special.

General retainers to counsel are themselves divided into (*a*) ordinary general retainers, applying to the Supreme Court and the House of Lords; (*b*) limited general retainers, applying only to the Courts specified therein; (*c*) separate general retainers, applying only to the Privy Council; and (*d*) separate general retainers, applying only to parliamentary committees. A general retainer gives counsel a right to, and puts him under a duty to, accept a brief in every proceeding by or against his client, and it lasts for the joint lives of counsel and client unless there be a failure on either side to comply with this rule.

A special retainer to counsel cannot be given until after the commencement of the proceeding to which it relates; it entitles counsel to receive, and binds him to accept, a brief in every stage of that proceeding. Circuit retainers, that is to say, retainers for a case at a particular assize, are included amongst special retainers.

The fees for retainers are as follows: General retainers, £10 10s. for parliamentary committees, and £5 5s. in all other cases; special retainers, £5 5s. for parliamentary committees, £2 2s. for the House of Lords and the Privy Council, and £1 1s. in all other cases.

Vol. II. of the *Annual Practice*, 1920, contains, under the heading of "Professional Etiquette" the Rules I.-XXIV. prepared by the Bar Committee and popularly known as the Retainer Rules. They deal exhaustively with the subject.

Retaliation. See LEX TALIONIS.

Retenementum. A withholding or deduction. In ancient conveyances of land the words *sine ullo retenemento* (without any deduction) were frequently used in order to make it absolutely clear that the grantor conveyed his entire estate in the lands.

Retire, as applied to a bill of exchange, usually means that an indorser has taken it up by paying his immediate or some subsequent indorsee, after which he is in a position to recover from the antecedent parties. But it is sometimes used in the case of an acceptor who has paid and extinguished the bill.

As to the retirement of a trustee, see TRUSTEE.

Retorno habendo, De, was a writ of execution issued in an action of replevin to compel the return of goods rightfully taken in distress and replevied. It has fallen into disuse, the ordinary writ of delivery (q.v.) being sufficient. See REPLEVIN; ELONGATA.

Retorsion. In international law, when a sovereign is not satisfied with the manner in which his subjects are treated by the laws and customs of another nation, he is at liberty to declare that he will treat the subjects of that nation in the same manner. This is called retorsion, but the term is little used. Compare REPRISALS; EMBARGO.

Retour sans protêt. (Return without protest.) The drawer of a bill of exchange may direct that there be a *retour sans protêt* if the bill is dishonoured. See SANS FRAIS.

Retractation, in probate practice, is a withdrawal of a renunciation (q.v.). A retractation is only allowed in special cases: it would apparently be permitted where the person in whose favour the renunciation was made has not availed himself of it, or has died.

Retraite. See RE-EXCHANGE.

Retraxit, in the old common law practice, was a mode of withdrawing from an action, and took place where a plaintiff or demandant abandoned his action at the trial, and thus lost his right of action altogether. (See NONSUIT.) It had long been practically obsolete.

Retreat. See DRUNKENNESS.

Retropannagium. After-pannage. See PANNAGE.

Return. A return is a report by an officer of a Court showing the manner in which he has performed a duty imposed on him. Thus, the sheriff or other officer executing a writ of execution theoretically has to return or report to the Court what he has done in pursuance of it, though in most cases it is not usual for a return to be made (unless ulterior proceedings are contemplated) except in the case of the writ of elegit (q.v.). If a return is required, an order calling upon the sheriff to make it (called formerly, in the language of common law practice, a rule to return) may be obtained. The return is usually written on the back of the writ, which is then filed. Returns to writs are commonly known by the

first words of the old returns, which were given in Latin, *e.g.*, "*nulla bona*," "*fieri feci*," "*non est inventus*," "*tarde*" (see the various titles). As to the return to a writ of mandamus, see MANDAMUS.

As to the consequences of a false return, see FALSE RETURN.

Companies and other associations established under Acts of Parliament are in many cases required to send in periodical returns to a public officer with reference to their condition. Thus every company formed under the Companies Acts, and having a share capital, is bound (Companies (Consolidation) Act, 1908, s. 26) to send in a yearly return to the Registrar of Companies, giving a list of it's shareholders, and showing the position of it's capital and the alterations in it's register of shareholders since the last return.

Returnable. Writs of execution, writs of mandamus, and many other kinds of writs, are returnable, that is, the person to whom they are directed is bound or may be required to make a return to them. The term is, however, chiefly used with reference to the time when the writ is returnable. Some writs are returnable at a date named in them, while others, such as writs of execution, are returnable as soon as they are executed. By analogy to this use of the word, a summons is said to be returnable on the day appointed for hearing it.

Return Days. Under the old practice there were four days in each of the Terms except Easter Term, and five days in Easter Term, on which writs were made returnable. These days were known as Return Days or Days in Bank.

Returning Officer. Returning officers are persons responsible for the conduct of the various parliamentary, municipal and local government, and other elections.

The persons who are to be returning officers at parliamentary elections (other than university elections) are set out in the Representation of the People Act, 1918, s. 28: speaking generally, the sheriff acts in counties and in parliamentary boroughs where there are sheriffs, while the mayor acts in other parliamentary boroughs. Those who are to be returning officers at university parliamentary elections are specified in Schedule V. to the same Act.

As regards municipal elections generally, the mayor is the returning officer when councillors for the whole borough are being elected; when the election is for only one ward the returning officer is an alderman selected for that purpose by the council on each 9th November (Municipal Corporations Act, 1882, s. 53: see also ss. 62 (6), 67).

There are special provisions as regards returning officers at municipal elections in the City of London and at Metropolitan Borough Council Elections.

The appointment of returning officers at elections of county councillors is in the hands of the county council (Local Government Act, 1888, s. 75 (2)); that of returning officers at parish council, rural district council, urban district council and other elections under the Local Government Act, 1894, is regulated by rules contained in the Election Orders made from time to time by the Ministry of Health under s. 48 (2) of that Act.

As regards the Salmon Fishery Acts, the returning officer at elections of conservators is the chairman of each Board of Conservators or any person appointed in writing by such chairman (Salmon Fishery Act, 1873, s. 4).

Return Irreplevisable. See REPLEVIN.

Return Office. A branch of the office of the Clerk of Enrolment (q.v.) to the COURT OF COMMON PLEAS.

Returnum averium. An ancient writ similar to the writ *de retorno habendo*.

Returnum irreplegiabile. The writ of return irreplevisable. See REPLEVIN.

Returnus (or Returna) Brevium. (The Return of Writs.) A manorial right, also acquired by some of the more important boroughs. The sheriff, on receipt of a writ from the King's Court commanding him to summon a resident within the manor or borough, had to deliver the writ to the bailiff of the liberty for execution. See 1 *P. & M. H. E. L.* 583, 644.

Reveland. In Anglo-Saxon times this was land held *ex officio* by a reeve (q.v.), after whose death it reverted to the king.

Revenue. See EXCHEQUER.

Reverend. This prefix to the name of a clergyman is not appropriated by the law to the clergy of the Church of England alone. The use of the prefix is of comparatively modern origin. A parson in late mediæval times was styled Sir Oliver Martext, or as the case might be. In the early part of the seventeenth century the prefix "Reverend" came to be used by the Puritan and Presbyterian ministers: somewhat later it was adopted by the parochial clergy, to whom it is applied in the preamble to the statute 14 Car. 2, c. 4; but it has been expressly decided that the prefix may be used upon the tombstone, in a parish graveyard, of a Nonconformist minister.

A bishop or archbishop is entitled "Right Reverend"; a dean, "Very Reverend"; and the inferior clergy, "Reverend" simply.

Reversal. This was the making of a judgment void for error. When, upon the return of a writ of error, it appeared that a judgment was erroneous, the senior judge pronounced the reversal of it. Down to, at any rate, the middle of the eighteenth century he did this in the ancient French form, the words of the reversal being: *Pur les errors evandit et auter errors manifest in le record, soit le judgment reverse.* See ERROR.

Reverse. A judgment is said to be reversed when it is set aside by a Court of Appeal.

Reversion; Reversioner. Where a tenant in fee simple grants the land to another person for a term of years, or for life, or in tail, the estate so created is called a particular estate, being only a part (or *particula*) of the estate in fee, and the interest of the tenant in fee simple, which still remains undisposed of, is called his reversion. It is a present or vested estate, by virtue of which he will have the possession of the land again on the determination of the particular estate. Similarly, if a tenant for life grants a lease for years, or if a tenant for years grants an underlease for a shorter term, the estate which remains in him is called a reversion. The owner of a reversion is called the reversioner.

The relationship of tenure exists between the owner of the reversion and the particular tenant, and therefore fealty (q.v.) is nominally due from the latter to the former. A rent service or other service may also be reserved by the owner of the reversion, and thus made incident to the reversion, so that if the reversion is aliened the rent or service passes with it. The rent may be severed from the reversion, but the fealty cannot; therefore if the owner grants the reversion to another person, he may reserve the rent to himself, but not the fealty (see ATTORNMENT; RENT.) A condition of re-entry may also be annexed to a reversion, and will pass with it on an assignment. As to the difference between a reversion and a remainder, see REMAINDER.

If A, being a tenant in fee simple, grants a lease to B, and B grants an underlease to C, reserving a rent, this rent is incident to B's reversion: consequently if A grants his reversion to B, this causes a merger or destruction of B's reversion, and, at common law, C's rent, being incident to it, would also be destroyed. B. would be tenant in fee simple in reversion, but his right to the rent would be gone. To prevent this it has been enacted (in effect) by the Real Property Act, 1845, s. 9, that where the reversion expectant on a lease is surrendered or merges, the estate next in reversion or remainder shall, for the purpose of preserving the incidents to the reversion so merged, be deemed to be the reversion expectant on the lease. In the case supposed, therefore, the rent payable by C. would be converted into a rent incident to B's reversion in fee simple.

As to covenants running with the reversion, see COVENANT.

"Reversion" is also used to denote a reversionary interest (q.v.), *e.g.*, an interest in personal property subject to the life interest of some other person.

As to sales of reversions, see REVERSIONARY INTEREST.

Reversionary Interest. Any right in property, the enjoyment of which is deferred, is a reversionary interest in the wide sense of the term; but reversionary interests, in the ordinary sense of the term, are interests in property which are not reversions or remainders in the strict sense, but are analogous to them. Thus, if personal property is limited to A for life, and after his death to B, this gives B a reversionary interest analogous to a remainder in land. Similarly, if A gives B a life interest in chattels, A retains a reversionary interest, analogous to a reversion in land.

Reversionary interests were formerly recognised only by the Court of Chancery, being equitable interests. (See EQUITY.) They are usually created by means of trusts, the legal estate in the property being conveyed to trustees, as in the case of an ordinary marriage settlement of personal property. See SETTLEMENT.

By the Married Women's Reversionary Interests Act, 1857, every married woman, with the concurrence of her husband, may by deed dispose of every future or reversionary interest in personal property, whether vested or contingent, to which she, or her husband in her right, may be entitled under any instrument made after the 31st December, 1857, or release or extinguish any power or equity to a settlement in regard to such personal property. Every such disposition must be acknowledged by her under the Fines and Recoveries Act, 1833. (See ACKNOWLEDGMENT.) The statute does not apply to marriage settlements, nor to reversionary interests which the married woman is restrained from alienating. It has no application to any woman married after 1st January, 1883: any such woman can deal

with her property as if she were a *feme sole*.

Formerly there was a rule in equity, that in the case of the sale of a reversionary interest in real or personal estate, the purchaser was bound to show that he had given the fair market price for it, and if he was unable to do so, the sale was set aside; this rule was abolished by the Sale of Reversions Act, 1867, but, in cases of fraud or unfair dealing, equity still intervenes. See EXPECTANT HEIR; INADEQUACY.

Reversion Duty. See LAND VALUES DUTIES.

Revert. To revert is to return: thus when the owner of an estate in land has granted a smaller estate to another person, on the determination of the latter estate the land is said to revert to the grantor. See REVERSION; REVERTER.

Reverter. In feudal times, on every grant of land, as Mr. Butler explains, "a right remained in the grantor to the services of the grantee during the continuance of his estate, and to a return of the land on its expiration. Whether this right of the grantor depended on an estate for life or in fee, it was of the same nature and indifferently called his *reverter* or *escheat*; but from the remoter probability of the return when the fee was granted, it became customary to call it, after a grant of the fee, his *possibility of reverter*; by degrees that expression was applied to those cases only where a limited fee had been granted, and the word escheat was applied to those where the grant had conferred an absolute estate in fee simple. A grant to a man and the heirs of his body was at common law a limited fee; and therefore, after such a grant, a possibility of reverter was said to remain in the grantor. When the statute *De Donis* converted such estates into estates tail, the return of the land was secured by it to the donor and was called his reverter. In all these cases, the words reverter and reversion are synonymous" (*Fearne on Cont. Rem.* (10th ed.), p. 381). A reverter after an estate in fee simple conditional is still called a possibility of reverter. See FORMEDON; POSSIBILITY.

Revesting. Where goods have been stolen and the offender has been prosecuted to conviction, the property in the goods revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise; but there is no such revesting where the conviction has been for any offence not amounting to larceny (Sale of Goods Act, 1893, s. 4). See RESTITUTION.

Review. When a taxing master has taxed a bill of costs, any party who is dissatisfied with the taxation may, before the certificate or allocatur is signed, deliver to the opposite party and carry in before the taxing master an objection specifying the items of which he complains, and apply to the master to review the taxation accordingly (Ord. 65, r. 39). If any party is dissatisfied with the result of this preliminary review, he may apply to a judge at chambers for an order to review the taxation, and the judge thereupon gives such directions (if any) to the taxing master as he thinks proper (Ord. 65, r. 41).

As to bills of review, see BILL OF COMPLAINT: as to the Court of Review, see COMMISSIONERS IN BANKRUPTCY: as to Commissioners of Review, see DELEGATES.

See COMMISSION.

Reviling. Under the statute 1 Edw. 6, c. 1, s. 1, the reviling of the Sacrament of the Lord's Supper is an indictable misdemeanour. This statute was repealed in the reign of Mary but was revived by the statute 1 Eliz. c. 1, s. 5. In the reign of Mary the statute 1 Mary Sess. 2, c. 3, s. 1, had made it an indictable misdemeanour to "disturb . . . any . . . priest . . . celebrating . . . Mass" or to "deface, spoile, abuse, breake or otherwise unreverentlye handle . . . the . . . Blessed . . . Sacrament" or otherwise to interfere with Roman Catholic worship; and this Act, by some curious chance, was never repealed.

Revising Assessors. Under the Municipal Corporations Act, 1882, s. 29, and Sch. 3, the burgesses of non-parliamentary boroughs elected every year two "revising assessors," whose function it was to revise the parish burgess lists. Their functions were transferred to the revising barristers by the County Electors Act, 1884, s. 4.

Revising Barristers were junior barristers appointed from 1843 to revise the lists of voters for parliamentary elections, and also, as from 1888, to perform what had been the functions of revising assessors. The appointment was for one year only: but in practice the same members of the Bar were reappointed year after year. There are now no revising barristers: all the statutes under which they had their being were repealed by the Representation of the People Act, 1918, s. 47, and Sch. 8. That Act (s. 12) substitutes for them the town clerks of boroughs and the clerks of county councils.

There were ninety-seven revising barristers

(Revising Barristers Act, 1873, s. 3; Order in Council dated 15th August, 1890); each of them received 250 guineas for his annual turn of duty (County Electors Act, 1888, s. 9); and the abolition of the office is deplored by the junior bar.

Revival; Revivor. The term "revival" is sometimes applied to wills. Thus, where a testator revokes a will, he is said to revive it if he subsequently re-executes it, or executes a will or codicil showing an intention to revive it.

In the law of divorce, condonation (q.v.) being forgiveness of a conjugal offence with an implied condition that the injury shall not be repeated, and that the condoning party shall be treated with conjugal kindness, it follows that on breach of the condition, even by the commission of a slighter offence, the right to a remedy for the former injury is revived: thus cruelty will revive condoned adultery.

Under the practice of the Court of Chancery before 1852, when a suit became defective by the death, marriage or bankruptcy of one of the parties, or by an assignment of the subject-matter of the suit *pendente lite*, or by some other change in the interest of some of the parties, it was necessary to revive it, that is, take steps for carrying on the proceedings: this was generally done by an order of revivor obtained as of course; but in some cases a new bill, called a bill of revivor, had to be filed. The Common Law Procedure Act, 1852, abolished bills of revivor (s. 52) and simplified the procedure on the subject in the Courts of common law as well as in the Court of Chancery. Now, Ord. 17 of the R. S. C. provides for the continuance of all causes or matters in all divisions of the High Court, notwithstanding the death, marriage, or bankruptcy of any party and notwithstanding any assignment, creation, or devolution of title; and Ord. 17 of the County Court Rules contains corresponding provisions. See SUGGESTION.

In the common law Courts, also, if six years had elapsed, or if one of the parties had died, after the recovery of a judgment, it was formerly necessary to revive it by writ of revivor, *scire facias* or suggestion (q.v.). Under the present practice in all the divisions, when six years have elapsed from the recovery of a judgment, or any change has taken place in the parties to the judgment (*e.g.*, by death), an application must be made for leave to issue execution: on that application the Court or judge may either order execution to issue, or may direct any question necessary to determine the rights of the parties to be tried. (Ord. 42, r. 23: see JUDGMENT.) Ord. 25, r. 14, of the County Court Rules, contains corresponding provisions.

Revocation; Revoke. To revoke literally means to recall (Latin, *revocare*). Thus, to revoke an offer or authority is to withdraw it. Revocation is the operation of revoking. Revocation is of three kinds—by act of the party; by operation of law; and by order of a Court of justice (judicial revocation).

Revocation by act of the party is an intentional or voluntary revocation. The principal instances occur in the case of authorities and powers of attorney and wills. The two former require no particular form of revocation. A will may be revoked by a subsequent inconsistent will or codicil, or by a writing declaring an intention to revoke, and executed with the same formalities as a will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking it (Wills Act, 1837, s. 20). As to revocation by marriage, see INFRA; and as to alterations in wills, see ALTERATION.

A revocation in law, or constructive revocation, is produced by a rule of law, irrespectively of the intention of the parties. Thus, a power of attorney is in general revoked by the death of the principal. A will is always revoked by the subsequent marriage of the testator, except when made in exercise of a power of appointment under which the property appointed would not, in default of appointment, pass to the real or personal representatives or next of kin of the testator (Wills Act, 1837, s. 18). As to powers of revocation, see POWER. As to the revocation of a guarantee, see GUARANTEE. Lunacy revokes an authority given by a lunatic while sane; but, as regards persons having no notice of his insanity, he continues to be liable for the acts of his agent.

When a grant of probate or letters of administration has been improperly obtained, it may be revoked by the Court at the instance of a person interested: and a grant may also be revoked at the request of the grantee, in, for instance, a case where he had erroneously believed himself to be the next of kin of the deceased. After revocation the grant is produced at the registry, and cancelled.

— **Rex est caput et salus reipublicæ** (4 *Co.*

124). (The king is the head and guardian of the commonwealth.) Quoted by Coke as supporting the remarkable proposition that one *non compos mentis* is guilty of high treason if he kills or attempts to kill the king.

Rex est legalis et politicus (*Lane*, 27). (The king is both legal and politic.) This *dictum* was used in *Bates' Case* (q.v.) in support of the proposition that "reasons politick are sufficient to guide judges."

Rex n'est lie per ascun statute si il ne soit expressement nosme (*Jenk. Cent.* 307). (The king is not bound by any statute unless he is expressly named therein.)

Rex non debet esse sub homine sed sub Deo et lege, quia lex facit regem (*Bract. lib.* i. 605.) (The king ought not to be under any man; but under God and under the law, for the law makes the king.) This early conception of the king as a creation of the law is in marked contrast to the "divine right" theory which ("*a deo rex, a rege lex*") made the law a creature of the king.

Rex non potest fallere nec falli (*Grounds of Law*, 438). (The king cannot deceive or be deceived.) The judges represent the king, but if they go wrong they do so in their personal capacities and not as the representatives of the king.

Rex non potest peccare (2 *Rolle*. 240). (The king can do no wrong.) It is not to be presumed that the king will do or sanction anything contrary to law, to which he is subject. But if an evil act be done, it, though emanating from the king personally, will be imputed to his ministers, for whose acts the king is in no way responsible. Upon this principle, the Crown cannot be prejudiced by the wrongful acts of its servants nor by errors in letters patent, etc.

See EADEM MENS, ETC.: and compare REX NON DEBET ESSE.

Rex nunquam moritur (*Branch, Max.* 5th ed. 197). (The king never dies.) Compare IN ANGLIA, ETC.

Rex quod injustum est facere non potest (*Jenk. Cent.* 9). (The king cannot do what is unjust.)

Compare REX NON POTEST PECCARE.

Rhodes, Laws of. A code of sea laws compiled, or reputed to have been compiled, at a very early date in the island of Rhodes. They were declared by the Roman emperors to be binding on the world at large. The only one of them extant is the *Lex Rhodia de Jactu*, which declares that where goods are thrown overboard in order to lighten a ship so as to save the ship and the rest of her cargo, then all the owners of the ship and the cargo must share in the loss; and this is the general average of our own day. See AVERAGE.

Rial. See GOLD COINS.

Ricambio; Ricambrium. See RE-EXCHANGE.

Richmond. See HERALDS.

Rider; Rider-roll. Anciently a rider-roll meant an additional clause on a separate piece of parchment which was added to the parchment roll containing an Act of Parliament. Later, a rider meant merely a new clause in an Act. Now a rider means merely some addition, such as a recommendation to mercy, occasionally made by a jury to their verdict in a criminal case.

Riding. From before the Conquest, Yorkshire and Lincolnshire were each divided into three parts known as ridings, or trithings, that is to say, thirds. The ridings of Lincolnshire have for hundreds of years been known as Parts: they are Holland, Lindsey and Resteven. In Yorkshire we still have the North Riding, the West Riding, and the East Riding. For each county there is only one sheriff: in Lincolnshire there is only one Lord Lieutenant, but in Yorkshire there is a distinct Lord Lieutenant for each Riding; and in both counties there is a separate Commission of the Peace for each Riding or Part.

Riding Clerk. Formerly each of the six clerks (q.v.) in turn kept for one year at a time the Controlment Book of all grants that passed the Great Seal, and during that year he was known as the Riding Clerk. Whether he did or did not ride is not clear, but during his year of office he was at one time allowed "one horse-keep."

Riding Officers. See COAST BLOCADE.

Riens in arrere (="nothing in arrear") was the name of the plea in bar used by the plaintiff in an action of replevin when he alleged that the rent had been paid or satisfied before the distress was taken. The reply which has taken the place of the plea in bar under the present practice was sometimes called by the same name. See REPLEVIN.

Riens passe per fait. Literally, nothing passes by the deed. This was the form of an exception used in an action on a deed.

Riens per Descent. This is said to be pleaded when one who is sued as heir of G H pleads: "The defendant had not at the commencement of this action, nor has he since had, nor has he, any lands, tenements or hereditaments by descent from the said G H in fee simple," or other plea to the like effect. See the Debts Recovery Act, 1830, s. 7.

Riens per Devise. One who is sued as devisee under the will of G H, deceased, is said to plead *riens per devise* if he plead: "The defendant is not devisee of any lands or hereditaments under the last will of G H, deceased," or other plea to the like effect.

Rier-county. See RERE-COUNTY.

Right.—I. A right, in its most general sense, is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. "We may therefore," says Mr. Holland, "define a 'legal right' as a capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others." It follows that every right involves (1) a person invested with the right, or entitled; (2) a person or persons on whom that right imposes a correlative duty or obligation; (3) an act or forbearance which is the subject-matter of the right. In some cases there is also (4) an object, that is, a person or thing to which the right has reference, as in the case of ownership.

With reference to their ultimate object or purpose, rights and duties are either primary [substantive, original], or secondary [adjective, sanctioning].

(i) Primary rights are those which can be created without reference to rights already existing. Thus, if A contracts to pay me £50, my right to the payment of that sum is a primary right. Primary rights are of two classes: (1) those rights to which every member of the community is *primâ facie* entitled; they consist of (a) personal (or absolute) rights, *e.g.*, the right to life, health and liberty of action (see TORT), and (b) public rights, which are those rights by which every member of the community is *primâ facie* entitled to use certain things which either belong to the State, or, if they belong to private persons, are subject to the right of public user; such are the rights of the public in respect of the sea, nagivable rivers, highways, public parks, etc. (see the various titles, and PUBLICI JURIS); (2) those rights which arise from relations other than membership of a community, and include the ordinary rights arising from ownership, contract, marriage, and similar relations.

(ii) Secondary rights can arise only for the purpose of protecting or enforcing primary rights. They are either preventive [protective] or remedial [reparative].

(1) Preventive or protective secondary rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a Court of law for their enforcement, and extrajudicial when they are capable of being exercised by the party himself. The right to prevent a threatened injury by injunction, the right to take proceedings to obtain a judicial recognition of a right which might be lost by lapse of time or adverse user, the right to institute proceedings for the administration of the estate of a deceased person or the assets of an insolvent person or corporation, and the right to security against the commission of a crime, are instances of judicial preventive rights; and the right of self-defence is an instance of an extrajudicial preventive right. See also ADMINISTRATION; DE BENE ESSE; LEGITIMACY; NE EXEAT REGNO; PERPETUATION OF TESTIMONY.

(2) Remedial or reparative secondary rights are also either judicial or extrajudicial. They may further be divided into (a) rights of restitution or restoration, which entitle the person injured to be replaced in his original position; (b) rights of enforcement, which entitle the person injured to the performance of an act by the person bound; and (c) rights of satisfaction or compensation. A right of entry or re-entry is an extrajudicial right of restitution, a lien is an extrajudicial right of enforcement, a right of distress or retainer is an extrajudicial right of satisfaction, the right of bringing an action of ejectment or detinue is a judicial restitutive right, the right of obtaining an injunction for specific performance and the right to compel the payment of a debt are judicial rights of enforcement, and the right of bringing an action of damages for breach of contract or tort is a judicial right of satisfaction. See REMEDY.

With reference to the nature of the obligation which they impose, rights are either *in rem* [real rights, general rights, rights against the whole world, *jura in rem*] or *in personam* [personal rights, relative rights, rights against determinate persons, *jura in personam*].

(1) A right *in rem* is one which imposes an obligation on persons generally, that is, either on all the world or on all the world except certain determinate persons. Thus, if I am entitled to exclude all persons from a given piece of land, I have a right *in rem* in respect of that land; and if there are one or more persons, A, B and C, whom I am not entitled to exclude from it, my right is still a right *in rem*. So if I am entitled to the services of a servant, I have a right *in rem* which

obliges all other persons not to interfere wrongfully with that relation. (See MASTER AND SERVANT; SERVICE.) A right *in rem* is always negative.

(2) A right *in personam* is one which imposes an obligation on a definite person. Thus, if A agrees to pay me £50, my right to that sum against A is a right *in personam*, belonging to the class of primary rights (*supra*). My right to liberty of action, so long as I do not interfere with other persons' rights, is a right *in rem*; if B infringes that right by imprisoning or assaulting me, I acquire a right to recover damages against him, which is a right *in personam* belonging to the class of secondary rights (*supra*). Primary rights *in personam* are either affirmative [positive] or negative, according as they require for their performance an act or a forbearance. Thus, if A contracts with B not to carry on business in a certain place, B has a negative right against A. Primary rights *in personam* are also subject to the following divisions:— absolute and conditional, legal and equitable, personal and transmissible, and of perfect and imperfect obligation. See the various titles, and CONTRACT; OBLIGATION.

II. "Right" is used by the old writers on real property law in the technical sense of a right which an owner of land had when he had been disseised, so that he had only the right of recovering possession either by entry or action. His estate was then said to be turned to a right. If A was disseised by B, and B died while in possession, so that the land descended to his heir, A could not recover possession by entry, but had to bring a possessory action (see DESCENT CAST); if A further suffered a certain time to elapse, or had judgment given against him in a possessory action, he could no longer recover by a possessory action, but only by an action on the right, meaning the right of ownership as opposed to the right to possession. Hence his estate was said to be turned to a mere, bare or naked right. These distinctions no longer exist, real actions having been abolished. See ACTIONS.

III. "Right," like "title" (q.v.), sometimes connotes the idea of a mode of acquisition. Thus, a person is said to hold or own property in his own right, or in right of another (*in auter droit*). If it descends to him, or he purchases it, he obtains it in his own right; but if he acquires it as representing another person, he is said to take it *in auter droit*. The principal mode of taking personal property *in auter droit* is by executorship or administration, for the executor or administrator holds the goods of the deceased as his representative. The difference is of importance as regards the law of merger (q.v.).

In the phrase "of common right," the word "right" seems to be used in a somewhat similar sense. Thus, when it is said that the remedy of distress for arrears of a rent-service exists of common right, and that every freehold tenant of a manor has a right of common of pasture appendant of common right, it is meant that the right is created by law, and not by agreement between the parties.

IV. "Right" is used in law, as well as in ethics, as opposed to "wrong." Thus a person may acquire a title by wrong. See TITLE.

Right Close, Writ of; Writ de recto clauso. One of the writs of right abolished in 1833: see RECTO. It lay only for tenants in *ancient demesne* (q.v.) who had been ousted of their lands. It was addressed to the lord and commanded him to do right in his court.

Right of Action is the right to bring an action. Thus, a person who is wrongfully dispossessed of land has a right of action to recover it. See CAUSE OF ACTION; CHOSE IN ACTION; ACTIO PERSONALIS MORITUR CUM PERSONÂ; REMEDY.

In the old writers, "right of action" was commonly used to denote that a person had lost a right of entry (q.v.), and had nothing but a right of action left. See RIGHT.

Right of Entry is the right of taking or resuming possession of land by entering on it in a peaceable manner. See ENTRY.

Rights of entry are of two kinds. An original or mere right of entry is a right of entry and nothing more. Thus, where a person has been disseised of land, or where an estate has determined, so that he becomes entitled to the possession of the land, he has an original right of entry. This kind of right was formerly inalienable, but may now (under s. 6 of the Real Property Act, 1845) be disposed of by deed. It is sufficient to support a contingent remainder, if the estate of the disseisee was itself sufficient.

A right of entry, by the exercise of which an existing estate is defeated, is a right attached to a reversion. It was formerly called a title of entry, to distinguish it from an original right of entry, because it could not be enforced by action, and was therefore not a right in the technical sense. It is also sometimes called a right of re-entry. The commonest instance of this kind of right

occurs in an ordinary lease, in which it is usual to reserve to the lessor the right of determining the lease by re-entry, if the lessee fails to pay the rent or perform the covenants. This kind of right is inalienable by itself, although (under the statute 33 Hen. 8, c. 34) the benefit of the condition passes on an assignment of the reversion, so that the assignee can take advantage of any breach of the condition committed after the assignment. The exercise of a right of re-entry for breach of a covenant or condition contained in a lease is restricted by s. 14 of the Conveyancing Act, 1881; as to which see FORFEITURE.

See CONTINUAL CLAIM; DESCENT CAST; RIGHT OF ACTION; TITLE.

Right of Representation and Performance. See COPYRIGHT.

Right Patent, Writ of. A writ which lay for a tenant in fee simple, if, for instance, another had recovered the lands against him by default in a *præcipe quod reddat* (see PRÆCIPE). It was abolished in 1833: see RECTO.

Right to Begin, on the hearing or trial of a cause, or the argument of a petition, etc., is the right of first addressing the Court or jury. The right to begin is frequently of importance, as the counsel who begins has also the right of replying or having the last word after the counsel on the opposite side has addressed the Court or jury. This rule is subject to the exception that where the second counsel at a trial before a jury does not call witnesses, the counsel who began has no right of reply.

The general rule is, that the plaintiff has the right to begin if the affirmative of the issue is on him, or if the onus of proving any one material issue, or of proving the amount of damages, rests on him. Otherwise, if the affirmative of the issue lies on the defendant, he has the right to begin.

Right to Convey. See BENEFICIAL OWNER; COVENANTS.

Ring-dropping. A form of swindle worked by a rogue who deposits on the pavement a ring or other article apparently of value—but actually worthless—which he picks up afterwards in the view of some person to whom the ring, etc., is then offered at what seems to be a bargain price. It will amount to larceny if the victim merely deposits his watch, etc., as security while he takes the ring, etc., to be valued, and if, as always happens, the ring-dropper meanwhile disappears; and it will be obtaining by false pretences if there is a sale outright.

Ringing the Changes. Where a man is given a good coin in payment for goods, and by a sleight of hand substitutes for it a bad coin which he hands back to the purchaser and declares to be the coin which had been paid, and where he thereby obtains a second good coin from the purchaser, he is said to ring the changes. This, as regards the second good coin paid, is larceny by a trick, and, as regards the bad coin, is the offence of uttering counterfeit coin.

The swindle more usually known as ringing the changes consists in asking for change and then so confusing the person who gives the change that more than the proper amount is obtained. This is larceny by a trick.

Rings. See SERJEANT AT LAW.

Riot. A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled by a breach of the peace, and to the terror of the public. A lawful assembly may become a riot if the persons assembled form, and proceed to execute, an unlawful purpose, to the terror of the people, although they had not that purpose when they assembled. But a riot cannot take place unless three persons at least are present. Every person convicted of riot is liable to be sentenced to fine and imprisonment with or without hard labour (Hard Labour Act, 1822).

Where twelve or more persons are committing a riot, it is the duty, under the Riot Act, 1 Geo. 1, st. 2, c. 5, of the mayor, sheriff, and certain other officers to make a proclamation in the King's name, commanding them to disperse; and every person who obstructs the making of the proclamation, or continues to riot for one hour afterwards, is guilty of felony, and liable to penal servitude for life, or three years' imprisonment with hard labour. These provisions of the Riot Act do not, however, in the least affect the common law right and the common law duty of justices to suppress a riot at any moment with whatever degree of force may be necessary; nor do they affect the common law right of private persons, acting on their own initiative, to do the same.

The riotous demolition, or attempted demolition, of any building, machinery, or mining plant, is felony punishable with penal servitude for life (Malicious Damage Act, 1861, s. 11.) Riotous damage or injury to any building, machinery, or mining plant, is a misdemeanour, punishable with seven years' penal servitude (ib. s. 12).

Persons whose property is damaged in a riot can recover compensation under the Riot Damages Act, 1886, which superseded the

ineffective and obsolete proceedings against the hundred previously available and made the police district the area liable. Where rioters damage a ship in distress, the remedy is under the same Act as applied by s. 515 of the Merchant Shipping Act, 1894.

See ASSEMBLY; ROUT; AFFRAY.

Riparian is that which relates to or is connected with the bank of a river. A riparian proprietor or owner is a person who owns land through or past which a river runs; and riparian rights are those arising from such a property. The riparian owner whose land is nearer the source of the river is called the upper riparian owner as compared with him whose land is more remote from the source.

As to the rights of riparian owners, see WATER.

Risk, in the law of marine insurance, denotes—I. A danger or peril insured against. II. The possibility of the loss happening under such circumstances as to make the underwriter liable; when this possibility has arisen (*e.g.*, by the departure of the vessel), the risk is said to commence or attach, and the assured's interest is said to be at risk. When the insurance is of such a nature that the peril which would make the underwriter liable for a total loss may happen as soon as the risk commences, the risk is said to be entire; if, on the other hand, some circumstance which would have contributed to the happening of the peril insured against has not taken place, the risk is divided or apportionable. For instance, if the ship deviate, the underwriter is discharged, but inasmuch as if she had been lost before the deviation he would have been liable, he has run the whole risk, and it is therefore said to be entire; but if part of the risk insured against has not been run (as where part of the cargo insured has not been shipped), the risk is divided, and the assured is entitled to a return of that proportion of the premium which covered the risk not run.

When goods are declared in a charter-party to be carried at "merchant's risk" this does not exclude the charterer's right to general average (see AVERAGE) in respect of goods properly jettisoned; but it does exclude the right of the charterer to recover in respect of the improper or negligent acts of the master or crew. The "owner's risk rate" of a railway company, on the other hand, does not exempt the company from liability for the negligence of their servants. See RISK NOTE.

Risk Note. Under the Railway and Canal Traffic Act, 1854, s. 7, a railway company may make with anyone for whom they carry goods a contract which makes them, instead of being liable as carriers (q.v.), liable only for such loss or injury as results from the wilful misconduct of themselves or their servants. Such a contract, which must be signed by the consignor, is popularly known as a risk note. The company must, of course, if so required, carry as and with the full liabilities of common carriers: but they may quote lower rates to those signing risk notes.

Ritual. This means the prescribed method of conducting religious services. The subjects with which it deals are: (1) The decorations, whether temporary or permanent, of the church; (2) the ornaments of the church; (3) vestments (technically known as the ornaments) of the minister; (4) ceremonies, and (5) rites.

The Privy Council is the tribunal which decides cases on these points: it reserves the right to reconsider its decisions, which, therefore, are not absolutely final.

Rivers. A public navigable river is one which is actually navigable and in which the tide ebbs and flows; all other rivers on which navigation is carried on are private rivers over which the public have acquired a right or easement of navigation. The ownership of the bed of a public navigable river is *primâ facie* in the Crown. As to the right of navigation, see NAVIGABLE; as to the right of fishing in a public river, see FISHERY.

All rivers and streams above the flow and reflow of the tide are *primâ facie* private, although many have become by immemorial user or by Act of Parliament subject to public rights of navigation. The right of navigation gives no right of property, or of fishing. When a private river runs through land belonging to one person, he is *primâ facie* the owner of the bed; when a private river separates the lands of two owners, each is *primâ facie* owner of the soil of the bed to the middle of the stream (*ad medium filum aquæ* (q.v.)). As to the effect of alluvion and dereliction, see those titles; see further as to rivers, and as to the rights of riparian owners, title WATER.

The pollution of rivers is forbidden by the Rivers Pollution Act, 1876.

See CONSERVATORS OF RIVERS.

Road. See HIGHWAY.

Road Board. This was a body, consisting of such persons as the Treasury might appoint, constituted under the Development and Road Improvements Fund Act, s. 7 (now repealed), for the purposes of improving the facilities for road traffic. Under the Ministry

of Transport Act, 1919, s. 2, its duties and powers were transferred, as from 23rd September, 1919, by the Ministry of Transport (Road Board Transfer of Powers) Order, 1919 (S. R. & O., 1919, II, p. 848), to the Ministry of Transport, and are now performed and exercised by the Roads Department of that Ministry.

Road Fund. A fund established pursuant to the Roads Act, 1920, s. 3, for the receipt and payment out (under the direction of the Minister of Transport) of moneys for road improvements under that Act and the Development and Road Improvement Funds Act, 1909.

Road, Rule of. The common law rule of the road, as between all traffic other than pedestrian traffic, is that everyone keeps to the left except when overtaking, in which latter case the overtaking horse or vehicle keeps to the right. Infractions of the rule are punishable summarily under the Highways Act, 1835, s. 78, for the purposes of which a motor car or other mechanically-propelled vehicle is, like a bicycle, a carriage.

As regards pedestrian traffic there is no rule of the road either at common law or under any statute. When meeting or overtaking one another pedestrians can take whichever side they please.

Pedestrians have, as against vehicular traffic, a primary right not merely to the footways, but also to the part of the road used by vehicular traffic; and there is no justification in law for the belief apparently entertained by many drivers that it is the business of pedestrians to get out of the way.

Roads Advisory Committee. The Ministry of Transport Act, 1919, s. 22, provides that, for the purpose of advising the Minister of Transport with respect to his duties in relation to road traffic, there shall be a committee, consisting of five members representing highway authorities, five representing the users of horse and mechanical traffic, and a secretary; all of whom are apparently to be appointed by the Minister.

Roads Department. This, as is stated under ROAD BOARD, has now replaced that body.

Robbery is where a person, either with violence or with threats of injury, takes and carries away a thing which is on the body or in the immediate presence of the person from whom it is taken, under such circumstances that in the absence of violence or threats the act committed would be a theft.

The enactment now dealing with robbery or attempted robbery is s. 23 of the Larceny Act, 1916.

Rod. See PERCH.

Rodknights. Those who held by the tenure of riding with their lord from one manor to another were known as rodknights in the time of Bracton, who uses the word *rodknightes* in a text which is otherwise Latin.

Roe, Richard. See RECOVERY.

Rogation Days. The Monday, Tuesday and Wednesday before Ascension Day (q.v.).

See FAST DAYS; GRASS-WEEK; PARISH BOUNDARIES.

Rogation Sunday. The fifth Sunday after Easter. It is the Sunday preceding Ascension Day.

Rogatio testium, in making a nuncupative will, is where the testator formally calls upon the persons present to bear witness that he has declared his will. See WILL.

Rogatory Letters. In the terminology of international law, this expression is used as a synonym for what in our law are known as "letters of request" (q.v.) addressed to foreign courts.

Rogues. See VAGRANCY.

Rolling Stock of a railway company cannot be taken in execution (see EXECUTION); and (Railway Rolling Stock Protection Act, 1872) the rolling stock of a railway company, when in use in a manufactory, pier, mine, or similar place belonging to some person or company other than the railway company, cannot be taken in distress for rent payable by the tenant of the manufactory, pier, mine, etc., provided it is conspicuously marked as belonging to the railway company.

Roll of the Temple. Dugdale, writing in 1666, says, at p. 199 of the *Origines Juridiciales*, that in the Middle Temple every Easter Term every Bencher paid 2s., every Barrister 1s. 6d., and every Student 1s., in order to provide a fund which was divided amongst the servants of the Inn. It was called either the Roll of the Temple or the Calves Head Roll. It had originated in a payment of 1s. a head made by members of the Inn who partook of a breakfast, provided by the chief cook, at which calves' heads were served.

Rolls. In ancient times all the principal records were written on pieces of parchment stitched together so as to form a long continuous piece, which was rolled up when not in use. Hence such records were called "rolls." This practice was followed up till modern times in the Court of Chancery. (See ENROLMENT.) Now, however, the practice of

writing on rolls has been abandoned for the more convenient method of inscribing in books.

The Parliament Rolls are the records of the proceedings of Parliament, especially Acts of Parliament, and therefore when any misprint appears in a printed copy of a statute, the Parliament roll is consulted to correct the error.

The Patent Rolls contain grants of liberties, privileges, lands, offices, etc., creations of peers, and other letters patent (q.v.), while the Close Rolls are the records of letters close (q.v.). There are also numerous other kinds of rolls of a similar nature, such as the charter rolls, fine rolls, liberate rolls, perambulation rolls, hundred rolls, etc.

The rolls above described form part of the public records of the kingdom and are kept at the Public Record Office in London.

See RECORD OFFICE; MASTER OF THE ROLLS; DOMUS CONVERSORUM.

The court rolls of manors were in ancient times long pieces of parchment, rolled up into convenient bundles; but in modern times what is called the court roll is neither more nor less than a large book in which the steward enters every transaction relating to the copyhold lands of the manor. See COPYHOLD.

The admission of every solicitor of the Supreme Court requires to be enrolled in a roll or book kept for that purpose by the Law Society (q.v.). A solicitor is said to be struck off the rolls when his name is taken out of this roll by the Law Society, either on his own application, where he wishes to cease to be a solicitor, or on the application of some one else, when he has been guilty of misconduct. Compare DISBAR.

In the old common law practice the steps in every action were entered on a roll, which was called the plea roll, the issue roll, and the judgment roll, according to the stage which the action had reached. This kind of roll no longer exists, the cause book (q.v.) and the books in which (see Ord. 41, r. 1) judgments are entered having taken its place.

Rolls of the Exchequer. These are the records of the Exchequer (q.v.) on both its administrative and its judicial side. They are now in the Record Office (q.v.).

Rolt's Act. A former popular title of the Chancery Regulation Act, 1862, which was passed at the instance of Mr. Rolt, M.P., who in 1867 became Lord Justice of Appeal.

Roly-poly. An obsolete name for a kind of roulette, and also a synonym of an old game called half-bowl. Half-bowl (see *Brand*; *Gaming*, p. 24), seems to have been a pleasing combination of bowls and skittles.

Roman Catholics. Apart from the provisions of the Act of Settlement (q.v.) the only disabilities to which Roman Catholics are now subject seem to be (under so much of the Roman Catholic Relief Act, 1829, as is still unrepealed) inability to present to a benefice, and incapacity to hold certain public offices, especially that of Lord Chancellor, or any office in the Church of England or Scotland, or in the ecclesiastical Courts. No one in Holy orders of the Church of Rome can be a member of the House of Commons (Act of 1829, s. 9); but neither can anyone in Holy orders of the Church of England. A Roman Catholic is, reasonably enough, debarred from holding in the Universities of Oxford, Cambridge or Durham any professorship of Divinity, or any office for which membership of the Church of England or Holy orders of that Church is required (Universities Tests Relief Act, 1871, ss. 1, 8), and also from holding any office in the colleges of Eton, Westminster or Winchester or, probably, in the other public schools properly so-called (Act of 1829, s. 16).

Rome-scot; Rome-fee. Peter Pence (q.v.).

Romilly's Act. The popular title of the Charity Procedure Act, 1812.

Romney Marsh. A large area of marsh land in Kent. At a very early period it was placed under the government of a body incorporated as "the bailiff, jurats and commonalty of Romney," but it does not now exist as a separate unit for any purpose of local government. The management of the sea walls and the drains which preserved it from inundation by the sea was anciently in the hands of twenty-three lords of manors known as the "Lords of the Marsh" or "Lords of the Levels"; they also have ceased to exercise functions; but the special drainage laws of the marsh have to a large extent been preserved in modern Acts of Parliament.

The town of Romney, from which the marsh is named, is one of the Cinque Ports.

Roncaria; Runcaria. Land grown with brambles or briar: scrub (1 *Inst.* 5).

Rood. This measure of land contains forty square perches (q.v.) of land, and is precisely one-fourth of an acre (Weights and Measures Act, 1878, s. 12).

Rood; Roodloft. The Rood was the Holy Cross and was anciently known as the Holy Rood.

In ecclesiastical law, the rood is a representation of the Crucifixion, placed over the

line dividing the choir or the chancel of a church from the nave, and the roodloft is the structure supporting the rood. The legality of either the one or the other depends upon whether they do or do not lead to what is regarded by the ecclesiastical Courts as superstitious worship.

Rood Day. This meant either the 14th September, which was the Feast of the Exaltation of the Cross, or the 3rd May, which was the Feast of the Invention (or Finding) of the Cross.

Root of Descent is the same as "stock of descent." See DESCENT.

Root of Title. See TITLE.

Rose Noble. See FARTHING OF GOLD.

Rota. A list showing the order in which persons are to be selected to perform particular duties. As to the selection of judges who are to be placed upon the rota for the trial of election petitions, see s. 13 of the Judicature Act, 1881.

Rotelanda; Rotelandia. Rutland. The statute mentioned under *Rutland* is also known as the Statutum de Rotelanda (Rothlan)

Rothlan. An abbreviated form of Rotelanda (q.v.).

Rotuli. The rolls (q.v.).

Rotulus Wintoniæ. The Roll of Winton. In the "*Descriptio compilata per Dominum Ingulphum, Abbatem Monasterii Croyland,*" it is alleged that King Alfred had caused a survey of England, somewhat on the lines of Domesday, to be made, and that this had been recorded in a roll, kept at Winton or Winchester, which had been lost before the time of Ingulf. Ingulf, who died in 1109, was the Abbot of Croyland; but the work alleged to have been compiled by him is now generally regarded as a forgery dating from the early part of the fifteenth century, and there is no reason for believing that the *Roll of Winton* ever existed.

Rouge Croix. See HERALDS.

Rouge Dragon. See HERALDS.

Roulette. See GAMING.

Roundabouts. See WHIRLIGIG.

Rout. A rout is an unlawful assembly which has made some motion towards the execution of the common purpose of the persons assembled. It is, therefore, intermediate between an unlawful assembly and a riot (q.v.).

Taking part in a rout seems to be a misdemeanour at common law, but prosecutions for it are unknown, the persons who might be charged with rout being always charged with unlawful assembly, if with anything. See ASSEMBLY, UNLAWFUL.

Royal Arms. See ARMORIAL BEARINGS.

Royal College of Physicians. This body was incorporated by royal charter dated 23rd September, 1618, which is still in force. The charter empowers the college to make bye-laws (of which a large number have been made) to regulate the affairs of the college and the conduct of its members.

The college consists of fellows (F.R.C.P.), members (M.R.C.P.) and licentiates (L.R.C.P.). A fellow cannot sue for his fees (see MEDICAL PRACTITIONER); and he, like a member, cannot engage in trade, or dispense medicines, or practise in partnership, or buy or sell a partnership (Bye-Law clxxviii).

Under an agreement made in 1883 pursuant to s. 19 of the Medical Act, 1858, the college and the Royal College of Surgeons (q.v.) have set up a joint examination board, and every person passed by that board is entitled to become L.R.C.P. or M.R.C.S. as the case may be.

Royal College of Surgeons of London. This body now exists under a royal charter granted in 1843. It consists of fellows (F.R.C.S.) and members (M.R.C.S.).

Neither fellows nor members of the Royal College of Surgeons would appear to be, as such, under the same restrictions as to fees, partnerships, etc., as apply to fellows and members of the Royal College of Physicians. See BARBERS AND CHIRURGEONS; MEDICAL PRACTITIONERS.

Royal Courts of Justice. The statutory description of the Law Courts in the Strand (Judicature (Officers) Act, 1879, s. 28).

Royal Fish are whale and sturgeon, and these, when either thrown ashore or caught near the coast, are theoretically the property of the king. See PREROGATIVE.

Royal Marines. A force first raised in 1755 to replace the soldiers of the army who since 1664 had been detailed for duty on ships of war. They are included in the regular forces for whose maintenance the annual sanction of Parliament is required (Army Act, s. 190). They are under the control of the Admiralty (*ib.* s. 179). When on land they are subject to the Army Act (*ib.* s. 179 (15) (16) (17)), but when afloat they are subject to the Naval Discipline Act (Army Act, s. 179 (15)) and to the ships' officers (King's Regulations and Admiralty Instructions, art. 1134), and perform ships' duties generally (*ib.* art. 1156).

Royal Marine Volunteers. The Naval Forces Act, 1903, s. 2 (1), authorised the

raising of this force, which, when on duty, was to be on the same footing as the Royal Marines (*ib.* s. 2 (2) (3)); but the force has not in fact been raised.

Royal Marriages. See MARRIAGE ACTS.

Royal Military Asylum. See DUKE OF YORK'S SCHOOL.

Royal Mines. See MINERALS.

Royal Victorian Order, The. This Order was founded in 1896. It includes Knights Grand Cross (G.C.V.O.); Knights Commanders (K.C.V.O); Commanders (C.V.O.); and Members (M.V.O.).

Royal Warrant. This expression has long been in popular use as meaning a writing, issued by some royal official, under which a tradesman is authorised to act in such and such a capacity (as chemist or tailor, for instance) for some member of the royal family. No such writing has any force in law, but the Merchandise Marks Act, 1887, s. 20, makes it an offence to falsely pretend that goods are made by a person holding such a warrant. The royal warrant more particularly known to the law is one of the instruments by which the Sovereign exercises his executive authority under either statute or the common law. Such a royal warrant is generally used as a mere working part of the machinery of government, but it can occasionally be used as a substitute for an Act of Parliament. Thus, the purchase of commissions in the Army was abolished by Royal Warrant of July 20, 1871, after the Government of the day had failed to secure the same result by Act of Parliament.

Rubric of a Statute. The title of a statute; it was anciently inscribed in red letters. See A RUBIO AD MIGRUM.

Rubrics. In ecclesiastical law, these are the rules, prescribing the manner in which services are to be conducted, which are printed in the Book of Common Prayer. In the pre-reformation missals such rules were inscribed in red characters, and to this fact the name is due.

Rudmas Day. The same as Rood Day (q.v.). Both terms are now obsolete.

Rule.—I. A rule is a regulation made by a Court of justice or a public office with reference to the conduct of business therein. Most rules are made under the authority of an Act of Parliament, and then have the same effect as an enactment of the legislature; such are the supplemental rules of Court made by the judges under the Judicature Acts.

II. "Rule" also signifies an order or direction made by a Court of justice in an action or other proceeding. The term "order" includes "rule" (Judicature Act, 1873, s. 100). The term is confined to the King's Bench Division of the High Court, being borrowed from the practice of the old common law Courts. Since the Judicature Acts rules have been used mainly in connection with writs of *certiorari*, *mandamus*, *habeas corpus*, *quo warranto*, and similar matters.

A rule is either—(1) absolute in the first instance, or (2) calling upon the opposite party to show cause why the rule applied for should not be granted; a rule of the latter kind is called a rule to show cause, or a rule *nisi*, because if no sufficient cause is shown, the rule is made absolute; otherwise it is discharged. Thus (Crown Office Rule 217) the Court in the first instance may make an order absolute *ex parte* for the issue of a writ of *habeas corpus* or it may grant an order *nisi*. See MOTION.

See SIDE-BAR; OF COURSE.

III. "Rule" sometimes means a rule of law. Thus we speak of the rule against perpetuities, the rule in *Shelley's Case*, *etc.* See LAW; PERPETUITY; SHELLEY'S CASE.

Rule of Court generally means a rule of procedure. (See RULE.) Sometimes, however, it means an order made by a Court in a particular action or matter: thus, if a compromise of an action in the Divorce Court provides for the payment of taxed costs, the compromise may be made a rule of Court in the King's Bench Division, and a compromise of an action in any Court may, if approved by the Court, be made an order of the Court in which the action was brought. The making of a compromise a rule of Court gives it the same effect as if the terms of the compromise were contained in an order of the Court.

Rules. See LIBERTY OF THE RULES.

Rump Acts. This was the term used, by Blount, for instance, to describe the ordinances, or Acts, passed by Parliament, without the concurrence of the King, between 26th August, 1642, and the Restoration in 1660.

Running Days. In a charterparty either "days" or "running days" means, in the absence of custom, all days, whether working or non-working, and includes Sundays and holidays. But custom may, as in the City of London, make either "running days" or "days" equivalent to working days, that is to say, may make "running days" or "days" exclude Sundays and holidays.

Running with the Land; Running with the Reversion. See COVENANT.

Rural Chapters. CAPITULA RURALIA (q.v.).

Rural Dean. Rural deans, or *decani rurales*,

certainly existed during the Anglo-Saxon period. It was then their duty to exercise many of the functions subsequently exercised by the archdeacon. About the thirteenth century, the archdeacon took over most of the work of the rural deans, and comparatively little was heard of them until within the last hundred years. Now they form part of the machinery of every diocese. The preparation of children for confirmation is the most important part of their work. They are required also to execute all processes and writs directed to them by the bishop, and to report to him on the lives of the clergy of the various parishes within the respective rural deaneries; but these latter duties are largely theoretical.

Every archdeaconry is an aggregation of rural deaneries. See KALENDAE.

Russell Gurney's Act. A former popular title both of the Recorders Act (q.v.) and of the Medical Act, 1876.

Russia Company. See MUSCOVY COMPANY.

Rutland, Statute of. This is a statute, "Touching the Recovery of the King's Debts," which is printed in the *Statutes at Large* as 10 Edw. 1, and in the *Statutes of the Realm* (under the title of *Provisiones factæ in Scaccario*) as 12 Edw. 1. It was repealed in 1888.

Rutter of the Sea. See OLERON, LAWS OF. *Rutter* was a form of *ruttier*, derived from the French *routier*, which itself was a derivative of *route*. But the *Rutter of the Sea* was more than a mere set of sailing directions.

S

"S." See BRANDING.

Sabbatum. Used in Domesday as meaning 'peace."

Sabbulonarium. This meant gravel, a gravel-pit, or money paid for the privilege of digging gravel.

Sac. Jurisdiction, more especially manorial jurisdiction. It was usually joined with "soc," and sometimes also with "toll" and "theam." All the four words had a meaning practically identical.

Sacabere. Another form is sakaburth which according to Bracton (lib. 2, c 32, fol. 150), means one who, having been robbed, gave surety to prosecute the offender.

Saccus. A sack. See BROCHIA.

Sack. As regards wool, the statute 14 Edw. 3, st. 2, c. 4, enacted that "the sack ought to contain twenty stone, and each stone fourteen pounds."

Sacrament. The reservation of the Holy Sacrament is illegal in the Church of England. See REVILING.

Sacrilege. A person who breaks into a place of divine worship and commits any felony therein, or who being in a place of divine worship commits any felony therein and breaks out of it, is liable under s. 24 of the Larceny Act, 1916, to penal servitude for life as a maximum punishment. And under the statute 1 Mary, Sess. 2, c. 3 (which was passed for the protection of Roman Catholic places of worship), any person who unlawfully pulls down, defaces, or breaks any altar, crucifix or cross in any church, chapel or churchyard is liable, on summary conviction, to imprisonment for three months, or until he repents.

Safe Conduct. In the ancient collections of original writs there are given forms of safe conducts issued by the King to aliens desirous of entering the kingdom. These safe conducts directed the royal officers to provide for the security of those holding them. They had to be enrolled in the Chancery and to be produced on demand. As to them, see the statutes 9 Hen. 3, c. 30; 25 Hen. 6, c. 5; 28 Hen. 8, c. 1.

At present, a safe conduct is merely a pass issued to an enemy subject by the authorities of a belligerent State.

Safe Pledge. See SALVUS PLEGIUS.

Saint-German, Christopher. A legal writer, born about 1460, who published in 1523 a handbook of English law entitled "*Dialogus de Fundamentes Legum et de Conscientia.*" There were numerous editions, at first in Latin and afterwards in English; and for more than two hundred years the book was in general use by law students. The English edition of 1721 is, like others, entitled "*Doctor and Student or Dialogues between a Doctor of Divinity and a Student in the Laws of England,*" etc.; and the work is generally known as *Doctor and Student.*

St. John of Jerusalem, Knights of. A synonym for Hospitallers (q.v.).

St. John of Jerusalem, Order of. An Order connected with ambulance work. It comprises Knights of Justice, Chaplains, Knights of Grace, and Esquires, as well as Ladies of Justice and Ladies of Grace. The fact that persons have been appointed (nominally by the King, who is the "Sovereign Head" of the Order) to these positions is notified in the *London Gazette*: but such appointment confers no rank or dignity and no duties seem to be imposed thereby.

St. Leonard's Act, Lord. The popular title of the Law of Property Amendment Act, 1859.

Saint Michael and Saint George, Order of. The Most Distinguished Order of Saint Michael and Saint George was founded in 1818 in order to provide titles of reward for public service in the Mediterranean. It is now used for all the overseas dominions. It includes Knights Grand Cross (G.C.M.G.), Knights Commanders (K.C.M.G.), and Companions (C.M.G.).

Saint Patrick, Order of. The Most Illustrious Order of Saint Patrick was founded in 1788. The Grand Master was formerly the Lord Lieutenant of Ireland; and the order consists of Knights (K.P.), who are the Sovereign, Royal Princes, and Irish peers or peers connected with Ireland.

St. Peter ad Vincula, Feast of. The 1st August: see GULE OF AUGUST.

Saints' Days. See FEASTS.

Saladine Tax (Tenth, Tithe). A tax imposed in 1188 by Henry II. at the request of Pope Innocent III., to defray the expenses of the Crusade against Saladin, the Sultan of Egypt and Syria. Persons who went on the Crusade were exempt, as also were religious communities. The tax was one-tenth of all goods and chattels; it did not extend to land. Juries were employed to assist in the assessment. It was the first tax on personal property.

Sale. A sale is a transfer of property or of a right from one man to another, in consideration of a sum of money, as opposed to barters, exchanges and gifts (q.v.). Almost any right may be transferred for a price, but the term "sale" is only applied to cases where the whole right of the vendor is transferred, not to cases where he creates a new or limited right in consideration of a money payment: thus a mortgage or lease is not a sale. Every sale includes (a) the agreement or bargain, (b) the payment of the price, and (c) the delivery or conveyance of the property. Sometimes the three transactions take place simultaneously, as where I go into a shop, select an article, pay the price and take it away, and then the transaction is a simple sale. But either the payment of the price, or the delivery (or conveyance) of the property, or both, may be postponed to a future time, giving rise to a contract or agreement to do something *in futuro*. In the case of chattels, such a postponement does not prevent the property or ownership from passing from the vendor to the vendee, provided that the thing sold is existent and ascertained, and that the contract of sale fulfils the legal requisites (see STATUTE OF FRAUDS), and therefore the "sale" is complete as soon as the contract has been entered into: such a transaction is called a "bargain and sale" (q.v.) or an executed contract of sale, although the contract has not been performed. But in the case of an agreement for the sale of land or of unascertained goods (*e.g.*, ten sheep to be selected from a given flock), the ownership does not pass, and therefore the sale is not complete until the land has been conveyed, or the goods ascertained: such a transaction is an executory contract of sale. See APPROPRIATION.

Ordinarily the person who sells is the owner of the property or his agent, but in some cases a person may sell property which does not belong to him, *e.g.*, a sheriff who has taken goods in execution. So a person may have a power of sale over property without having the ownership in it; as in the case of an ordinary mortgagee of land or a pledgee of chattels. (See MORTGAGE; POWER.) So when a person has a charge on property, he may take proceedings in the High Court to have it sold in satisfaction of the debt. This is sometimes called a judicial sale. See HYPOTHECATION.

Again, a sale is usually a voluntary act, but in some cases the owner of property may be compelled to sell it by the order of a Court: thus in an action for partition the Court may order a sale instead of a partition (q.v.) if the nature of the property makes that course preferable, and then even the non-assenting co-owners are ordered to join in the conveyance, or the conveyance is effected without their concurrence. (See VESTING ORDER.) Railway and other companies are frequently empowered to purchase land, etc., from the owners against their will. See POWER.

See BILL OF SALE; CONTRACT; RESALE; VENDORS AND PURCHASERS; WARRANTY.

Sale of Goods. See AGENT; APPROPRIATION; ASSUMPSIT; AUCTION; BILL OF SALE; BOUGHT AND SOLD NOTES; BREAD; BROKERS; C.F.I.; CAVEAT EMPTOR; COAL; CONDITIONS OF SALE; CONTRACTS; CONVERSION; DAMAGES; DEL CREDERE; DELIVERY; DEPOSIT; EARNEST; EXCHANGE; FACTOR; FACTORS ACT; F.O.B.; GOODS BARGAINED AND SOLD; GOODS SOLD AND DELIVERED; HIRE-PURCHASE; HORSES; INFANT; INNKEEPER; LIEN; MARKET OVERT; MERCHANDISE MARKS; MISREPRESENTATION; MISTAKE; NECESSARIES; OPTION; PLEDGE; RE-SALE; RESCIND; STATUTE OF FRAUDS; STOPPAGE IN TRANSITU; TEA; WARRANTY; WEIGHTS AND MEASURES.

Sale of Land. See ABSTRACT OF TITLE; ASSIGN; AUCTION; BENEFICIAL OWNER; CAVEAT EMPTOR, QUI, ETC.; COMPENSATION; CONCEALMENT; CONDITIONS OF SALE; CONTRACT OF SALE;

CONVEY; COVENANT; DEED; DEPOSIT; ESTATE CLAUSE; FEE; FINE (III.); FURTHER ASSURANCE; GRANT; HABENDUM; LAND REGISTRIES; MEMORANDUM; MISDESCRIPTION; MORTGAGE; OPERATIVE WORDS; PARCELS; PARTICULARS; PURCHASER WITHOUT NOTICE; RECITALS; REQUISITIONS; RE-SALE; SEARCHES; SPECIFIC PERFORMANCE; STATUTE OF FRAUDS; SURRENDER; SETTLED LAND; TITLE; TRUST; WORDS OF LIMITATION.

Sale or Return. A contract of sale or return differs from an ordinary contract of sale in one respect only, namely, that the buyer has the right of returning the goods to the seller within a reasonable time, and that the seller, upon such return, is re-invested with property in the goods and is bound to accept them in satisfaction of the buyer's liability.

Salford Hundred Court of Record is an inferior and local Court of Record having jurisdiction, if the cause of action arise wholly or in part within the Hundred of Salford. (See HUNDRED.) Its jurisdiction and procedure correspond to those of a County Court. See the Salford Hundred Court of Record Acts, 1868 and 1911, 31 & 32 Vict. c. cxxx. and 1 & 2 Geo. 5; c. clxx. Appeal lies to the Court of Appeal (Act of 1911, s. 8).

Salisbury Court. See PRIVILEGED PLACES.

Salmon. This includes all migratory fish of the genus salmon by whatever name they are called; see the Salmon Fishery Act, 1861, s 4, which enumerates the various names, including "sea trout," "white trout" and "peal."

The ordinary "brown trout" is not migratory.

Salt. See GRAINAGE.

Salt Silver. A payment of one penny made by some tenants to the lord at Martinmas, as commutation of their duty to carry salt from the market to his larder.

Salus populi est suprema lex (*Bac. Max. Reg.* 12). (The welfare of the people, or of the public, is the paramount law.) Compare NECESSITAS PUBLICA, ETC.

Salute. The salute or salus was a gold coin, of the value of twenty shillings, coined by Henry V. and Henry VI., not as part of the English coinage, but for circulation in the parts of France held by them. There was also a half-salute. Compare BLANK.

Salvage; Salvors.—I. Salvage is the compensation allowed to persons (salvors) by whose assistance a ship, or boat, or the cargo of a ship, or the lives of the persons belonging to her, are saved from danger or loss, in cases of shipwreck, dereliction, capture, or the like. The assistance must be voluntary, and not under any contract or duty, and must involve skill, enterprise and risk on the part of the salvors. Salvors have a retaining lien for their remuneration on the property rescued. (See LIEN.) In the absence of an agreement between the salvors and the owners of the property salved, the Court will assess the amount which ought to be paid to the salvors. In doing so the Court will have regard to the skill, enterprise and risk involved, and to the fact that if their efforts had been unsuccessful, they would not have been paid anything. The Court will refuse to enforce an exorbitant salvage agreement. See TOWAGE.

Claims for salvage are usually enforced in Courts having Admiralty jurisdiction.

II. By analogy, the term salvage is also used in cases which have nothing to do with maritime perils, but in which property has been preserved from loss by the last of several advances by different persons. In such a case, the person making the last advance is frequently entitled to priority over the others, on the ground that, without his advance, the property would have been lost altogether. This right, which is sometimes called that of equitable salvage, and is in the nature of a lien, is chiefly of importance with reference to payments made to prevent leases or policies of insurance from being forfeited, or to prevent mines and similar undertakings from being stopped or injured.

See CINQUE PORTS; PRIZE SALVAGE.

Salvage Money. Money paid as salvage. Officers and men of the Royal Navy get it for salvage services to ships other than king's ships.

Salvus plegius. Safepledge, or bail, for appearance. See Bracton, lib. 4, c. 2.

Sanction. In the original sense of the word a sanction is a penalty or punishment provided as a means of enforcing obedience to a law. In jurisprudence a law is said to have a sanction when there is a State which will intervene if it is disobeyed or disregarded. Therefore, international law has no legal sanction; and this was abundantly proved during and after the War of 1914-1918 to be so in practice.

Sanctuary. This meant any place in which neither the civil nor the criminal process of the law could be executed. But, against a man in sanctuary, civil proceedings could be taken and effect given to them, except by the taking of the defendant's body in execution.

Sanctuary originated in the ecclesiastical claim for immunity for all persons taking

refuge in consecrated buildings or consecrated ground; and it was afterwards extended to various other places. Sanctuary (see ABJURATION) was finally abolished in 1623, but *quasi*-sanctuaries existed for nearly another hundred years: see PRIVILEGED PLACES, and, for an extended account, *Mazzinglie, Sanctuaries* (1887).

Sanctus Bell. At the Sanctus of the Mass (which is anterior to the Consecration and, therefore, also to the Elevation) a bell is rung at each of the three repetitions of the word "*sanctus.*" In the modern development of the Communion Service in the Church of England, a bell is sometimes rung at the elevation of each of the Elements during the consecration prayer; it has been decided that it is illegal to fit the church bell so that, from inside the Church, it can be tolled for this purpose or, to use the words of the judgment, be used as a *sanctus* bell.

Sand Gavel. A payment made by tenants to their lord for liberty to dig gravel.

Sand Grouse. These are birds, frequenting sandy tracts in various parts of Europe, Asia and Africa, with feet feathered like those of the British grouse. They are not, however, grouse for legal purposes, nor, indeed, are they generally found in these islands. A number of them, having migrated over to England about 1888, were promptly exterminated; and the Sand Grouse Act, 1888, was passed for the protection of any future visitants; but none seem ever to have come since. The Act was of limited duration; but it has been extended from time to time by various Expiring Laws Continuance Acts.

Sanguinem emere. This, as regards villeins, meant to purchase freedom.

Sanitary Acts. The Public Health Act, 1875, s. 4, defines this expression as meaning the enactments specified in Schedule V., Pt. 1 of the Act, and repealed by s. 343.

Sanitary Authorities are bodies having jurisdiction over their respective districts in regard to sewerage, drainage, scavenging, the supply of water, the prevention of nuisances and offensive trades, etc., all of which come under the head of "sanitary matters" in the special sense of the word. Sanitary authorities also have jurisdiction in matters coming under the head of "local government" (q.v.). Urban sanitary authorities are the corporations or the urban district councils which respectively have jurisdiction in boroughs, towns, and urban districts (Public Health Act, 1875, s. 6; Local Government Act, 1894, s. 21 (2)). Rural sanitary authorities are the rural district councils which have jurisdiction in poor law parishes and unions not being within an urban district (Public Health Act, 1875, ss. 5, 9; Local Government Act, 1894, s. 21 (2)). A port sanitary authority is one having jurisdiction over a port (Public Health Act, 1875, s. 287; Public Health (Ports) Act, 1896). London is subject to special Acts, as to which, see PUBLIC HEALTH. See LOCAL BOARDS OF HEALTH; METROPOLITAN BOARD OF WORKS; NUISANCE; RATE.

Sans ceo que. See WITHOUT THIS.

Sans frais. (Without expense.) Sometimes used as an equivalent for RETOUR SANS PROTÊT (q.v.).

Sans nombre, as applied to rights of common, means not a common for innumerable beasts, but for a number not certain, the limit being fixed by some other standard than that of number. Common of pasture in gross *sans nombre* is a right to turn on the common so many cattle as the common will maintain beyond the cattle of the lord and those who have common appendant and appurtenant there. As applied to common of pasture appurtenant, the term "*sans nombre*" can mean no more than that the measure of the right is levancy and couchancy (q.v.).

Sans recours. (Without recourse) (q.v.).

Sarcle. (To hoe.) The statute 25 Edw. 3, c. 1, speaks (in the English version) of the "time of sarcling."

Sark. One of the Channel Islands (q.v.).

Sarkellus. A medieval unlawful engine for taking fish.

Sart. An abbreviated form of "assart" (q.v.).

Satisfaction is the exhaustion of an obligation by performance (q.v.), or some act equivalent to performance. Thus, where a debt is due by one person to another, payment by the debtor or retainer by the creditor produces satisfaction of the debt. A judgment may be satisfied by payment or execution, and when this has been done the defendant is entitled to have satisfaction entered, upon the order of a master obtained *ex parte* at chambers on affidavit (P. M. R. (17); Ord. 61, rr. 26, 27).

In equity, the doctrine of satisfaction is chiefly made use of in cases where satisfaction is implied from the ambiguous acts or language of testators or settlors. Thus, if a parent bequeaths a legacy to a child by way of portion, and afterwards (*e.g.*, upon the marriage of the child) gives him a sum by way of portion, the latter sum operates as a satisfaction of the former, either completely or

pro tanto; that is, the child cannot claim the legacy on the death of the parent. So if a testator gives a legacy to his creditor, it operates as a satisfaction of the debt, provided that the legacy is equal to or greater than the debt, and that no contrary intention appears. Sometimes "satisfaction" is distinguished from "ademption" (q.v.), the former being applied to cases where a person has entered into an agreement or covenant to settle property on another, and afterwards gives that person an equal or greater benefit by his will, in such a manner that he must be presumed to have intended the gift to operate as a satisfaction of his agreement or covenant, and not to be an additional benefit; while "ademption" is the converse case of a person giving property by will and afterwards giving a similar benefit by deed impliedly in satisfaction of the former gift. The distinction lies in the difference between revocable and irrevocable instruments, and is of importance in this respect, that in cases of satisfaction the persons intended to be benefited have the right to elect which gift they will take, whereas in cases of ademption there is no such right.

See CUMULATIVE; DEBITOR NON, ETC.; ELECTION; PERFORMANCE.

Satisfied Term. See TERM.

Saturday's Stop. A popular name in the North of England of what is now known as the weekly close time for salmon. See CLOSE SEASON.

Saunkefin. (*Sang qui fin.*) Anciently this meant a failure of issue.

Saver Default. Anciently this meant to excuse default, as where a man having made default in appearance came afterwards and showed a good cause—such as the fact that he had been in prison when he should have appeared.

Savigny. Friedrich Carl von Savigny, the greatest modern jurist, was born 21st February, 1779, at Frankfort-on-the-Main; became professor at Marburg, Landshut and Berlin, where he was made minister for the revision of the statutes; and died 25th October, 1861. He founded the historical school of jurisprudence. His principal works are:—*The Right of Possession* (translated into English by Sir Erskine Perry); *The Capacity of our Age for Legislation and Jurisprudence* (translated into English by A. Hayward, under the title of "*The Vocation of our Age, etc.*"); *History of Roman Law in the Middle Ages*; *System of Modern Roman Law*; and the *Law of Obligations*.

Savings Banks. There are (1) Trustee Savings Banks; (2) Post Office Savings Banks; (3) Military, Air Force and Naval Savings Banks, and certain other savings banks with a statutory origin (all of which are under Government control); and (4) voluntary savings banks not under Government control.

Trustee savings banks are regulated by a series of enactments commencing with the Trustee Savings Banks Act, 1863, and ending with the Trustee Savings Bank Act, 1918.

Post Office Savings Banks are regulated by another series of enactments, commencing with the Post Office Savings Bank Act, 1861, and ending with the Post Office Savings Bank Act, 1908.

Military Savings Banks were established pursuant to the Military Savings Bank Act, 1859, for the purpose of receiving deposits from non-commissioned officers and men of the Army. Naval Savings Banks, for ranks other than the commissioned ranks of the Navy and the Royal Marines, were established pursuant to the Naval Savings Bank Act, 1868. The Air Force (Application of Enactments) (No. 2) Order, 1918, made 7th May, 1918, applied the Military Savings Bank Act, 1859, to the Air Force, and so, amongst other things, authorised the establishment of savings banks for what is now the Royal Air Force.

A savings bank is an institution which receives small deposits at a fixed rate of interest and to a limited aggregate amount in any one year or in all. Thus, in the case of the Post Office Savings Bank the limits are £50 in one year and £200 in all.

Trustee Savings Banks are expressly forbidden by the Savings Banks Act, 1891, s. 1, to describe the Government as being responsible to depositors with them, but they are required to pay over to the Government the deposits which they receive; and the State, as the result of this, and of the system of inspection which exists, is really responsible to the depositors in such banks to practically the same extent as it is for deposits lodged in either the Post Office Savings Bank or in the savings banks maintained for the Army, etc. There has, however, been a great diminution in the number of trustee savings banks since the Post Office Savings Bank was established in 1861.

Under various statutes, there are also Railway Savings Banks for the men employed on railways: they are under the supervision of the Registrar of Friendly Societies. For seamen in the Merchant Service there are special savings banks regulated by ss. 148-154 of the Merchant Shipping Act, 1894, so as to make

the depositors secure. For the smallest depositors there are Penny Savings Banks, which were first recognised by s. 27 of the Savings Bank Investment Act, 1863, and which have since been the subject of such statutory regulation as, while not making them by any means as safe for depositors as is the Post Office (which also accepts very small sums), puts them on a different level from the voluntary savings banks. The latter include, of course, many perfectly respectable and solvent bodies, but they include also the "farthing clubs" and the "share-out clubs" which periodically come under public notice when a treasurer fails to repay the depositors.

Savour of. In the law, this means to partake of the character of. Thus personal estate consisting of an interest in or arising out of land is said to "savour of the realty."

Savoy. See PRIVILEGED PLACES.

Scabini. In a charter of Henry VIII., the wardens of King's Lynn are termed *scabini*.

Scalam, Ad. Payment was said to be by the scales (*ad scalam*) when, upon a payment into the Exchequer, sixpence was added to each twenty shillings in order to compensate for deficiency in weight: and this was said though no scales were used.

Scandal; Scandalous. In pleading, "scandal consists," as Mr. Daniell says, "in the allegation of anything which is unbecoming the dignity of the Court to hear, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause: to which may be added, that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous."

Scandalous matter in a pleading (Ord. 19, r. 27) or in an affidavit (Ord. 38, r. 11) is liable to be struck out.

Objection may be taken to an interrogatory on the ground that it is scandalous (Ord. 31, r. 6).

Scandalum magnatum. The making of defamatory statements regarding persons of high rank, such as peers, judges, or great officers of State, was anciently known as *scandalum magnatum*, and the person guilty of it was liable, not only in damages, but also to punishment under the statutes 3 Edw. 1, c. 34, 2 Rich. 2, c. 5, and 12 Rich. 2, c. 11. The action for damages lay, without proof of special damages, in respect of words which ordinarily were not actionable. Thus where a clergyman unwarily said from the pulpit: "The Lord of Leicester is a wicked and cruel man and an enemy to the Reformation," the Earl of Leicester recovered a verdict for £500. There have, however, been no proceedings for *scandalum magnatum* during the last two hundred years, and the statutes on the subject were all repealed in 1887.

Scavage. See PACKAGE.

Scavenger. In the City of London, and in several other of the unreformed corporations, "scavengers" were formerly included amongst the minor municipal officers. An Act introduced in 1695 was entitled, "An Act for exempting Apothecaries from serving as Constable, Scavenger, and other Parish and Ward Officers." The scavenger in this sense did not himself clean the streets, but he saw, or was supposed to see, that it was done. Thus in Aberystwith in 1835, churchwardens and overseers of the poor were selected for the office, and they got paupers to do the actual scavenging.

Sceat. In the Anglo-Saxon period this was a coin corresponding approximately to a penny.

Scharnpenny. A composition paid by some tenants for non-observance of the duty of penning their cattle at night in the lord's yard, as in some cases they were obliged to do for the benefit of the lord's manure pit.

Scheme. A scheme is a document containing provisions for regulating the management or distribution of property, or for making an arrangement between persons having conflicting rights. Thus, in the practice of the Chancery Division, where the execution of a charitable trust in the manner directed by the founder is difficult or impracticable, or requires supervision, a scheme for the management of the charity will be settled by the Court.

Under the Charitable Trusts Acts (q.v.), the Charity Commissioners are empowered to provisionally approved and certify schemes which cannot be carried into effect without the authority of Parliament, and report them to Parliament to be included in a general Act; but this is rarely done, as most schemes can be settled under the *cy-près* (q.v.) doctrine, either by the Commissioners, or by the Board of Education, or by the Chancery Division.

Under the Railway Companies Act, 1867, ss. 6-20, when a company is unable to meet its engagements with its creditors, the directors may prepare a scheme of arrangement between the company and the creditors, and file it in the Chancery Division; if it is assented to by three-fourths of each class of creditors and a majority of the shareholders, it may be

confirmed by the Court and enrolled, and then has the force of an Act of Parliament.

See INCLOSURE.

Schetes. In the fifteenth century this meant usury: see Rot. Parl., 14 Rich. 2.

Schism Act. The popular title of the statute 13 Ann. c. 7.

School. The Elementary Education Act, 1870, defined (s. 3) an elementary school as one at which elementary education was the principal part of the education there given, but there is no definition, either in this Act or elsewhere, of the expression "elementary education," which therefore must be taken to have its ordinary colloquial meaning. The Education Act, 1921, s. 170 (1) enacts: "The expression 'elementary school' means (except in the case of courses of advanced instruction given in pursuance of this Act) a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payment in respect of the instruction from each scholar exceeds ninepence a week, or any school carried on as an evening school under the regulations of the Board of Education, or a continuation school." A public elementary school was defined by s 7 of the Act of 1870 as an elementary school at which a child, if the parent so desired, received no religious instruction, which was at all times open to inspection by the official inspectors, and which was conducted in accordance with the Education Code (q.v.): and s. 27 of the Education Act, 1921, is to the same effect. The expression "certified efficient school," includes a public elementary school (Education Act, 1921, s. 170 (2)); and also (if certified as efficient by the Board of Education) schools for blind, deaf, dumb, or epileptic children, workhouse schools, and any elementary schools not conducted for private profit (*ib.*).

As to other kinds of schools, see under EDUCATION. See also COUNCIL SCHOOL.

School Attendance Committee. A body formed, for the purpose indicated by its name, in every school district which was not within the jurisdiction of a school board (Elementary Education Act, 1876, s. 7 (2)). Its powers and duties were transferred in 1902 to the local education authority (q.v.) by the Education Act, 1902, s. 5.

School Boards. These were bodies corporate which were created by the Elementary Education Act, 1870, for the purpose of providing and conducting public elementary schools other than those provided by the various religious denominations and by private persons.

The school boards were elected in boroughs by the burgesses and elsewhere by the ratepayers. Their powers and duties were transferred in 1902 to the local education authorities (Education Act, 1902, s. 5).

School District. Under s. 4 and Schedule I. (both repealed by the Education Act, 1902) of the Elementary Education Act, 1870, England was divided into school districts consisting, in London, of the Metropolis, in boroughs, of the borough, and in parishes, of the parish. By Schedule III., par. 1, of the Education Act, 1902, it was provided that any reference to a school district should be construed as a reference to the area for which a local education authority (q.v.) acted. It will now be construed as a reference to the area for which the present local education authority acts.

Science and Art Department. This was, from its origin in 1837 down to 1856, a branch of the Board of Trade. In 1856, when the Education Department was formed, it became a branch of that department; but it received a charter of incorporation in 1864, and from that time it was practically a distinct department. Its place was, however, taken in 1899 by the Board of Education (Board of Education Act, 1899, s. 2 (1)), and it ceased to exist.

Scienter is an allegation in a pleading that the defendant or accused person did a thing knowingly. Thus, in an indictment for receiving stolen goods, the allegation that the prisoner knew them to have been stolen is called the *scienter*. So, where a person keeps an animal of a savage disposition, he is answerable for any injury it may do (even though he has done his best to keep it from doing harm), if reasonable ground can be shown for presuming that its ferocious character was known to him: this knowledge is technically called the *scienter*. See ANIMALS, LIABILITY FOR.

Scientia utrinque par pares contrahentes facit (3 *Burr.* 1910). (Equal knowledge on both sides makes the contracting parties equal.) That is to say, they are put on the footing essential to the conclusion of a valid contract of marine insurance, with regard to which the settled law is that the insurer has a right to know every material fact known to the insured, unless (Marine Insurance Act, 1906, s. 18 (*c*)) where disclosure is waived by the insurer.

Scilicet. This is used as meaning "to wit," "that is to say."

Scintilla juris. (A spark or fragment of right.) If a conveyance of land is made to A and his heirs to the use of B and his heirs until the happening of a certain event and then to the use of C and his heirs, the use is executed in B and his heirs, so that A has no seisin left in him. If then the event happens, who is seised to the use of C? Formerly it was supposed that on the happening of the event the original seisin reverted back to B, so that he was seised to the use of C, and that meantime a possibility of seisin, or *scintilla juris*, remained in him. This doctrine was always discountenanced by the best authorities, and was formally abolished by the Law of Property Amendment Act, 1860, s. 7

Scire facias. In proceedings in the High Court of Justice, a *scire facias* is a writ founded upon some record, such as a judgment, letters patent, etc., and directs the sheriff to make known to (*scire facias*) or warn the person against whom it is brought to show cause why the person bringing it should not have advantage of the record, or (as in the case of a *scire facias* to repeal letters patent, Crown grants, charters and franchises) why the record should not be annulled and vacated It is in all cases considered in law as an action, because the defendant may plead to it, but in some cases it is an original writ, while in others it is rather a writ of execution.

Formerly the writ always issued from the Court in which the record on which it was founded was supposed to remain, so that a *scire facias* on a judgment in the Queen's Bench would be issued out of the Court of Queen's Bench. At the present day, therefore, it would seem that such a *scire facias* would be brought in the King's Bench Division.

Scire facias is now rare, and the learning with regard to it is not of much practical importance. It is generally used only to repeal letters patent other than those for inventions; in case of further breaches after judgment in an action on a bond under the statute 8 & 9 Will. 3, c. 11; and under the Forfeiture Act, 1870, s. 27, in order to enforce orders and judgments against the estate of a convict.

If the sheriff executes the writ by warning the defendant, he returns *scire feci* ("I have caused to be warned"); if he does not warn him, he returns *nihil*. After the return the plaintiff enters a rule to appear (see RULE); if the defendant fails to appear, judgment goes against him by default. If, however, he appears, the plaintiff delivers a declaration praying execution, and the pleadings proceed as in an action at law under the old practice before the Judicature Act, 1873 (see PLEADING); every issue of fact on a *scire facias* is tried in the King's Bench Division.

A *scire facias* is an original action when it is issued to repeal letters patent; thus, if the King by his letters patent has granted one and the selfsame thing to several persons, the first patentee may sue out a *scire facias* to repeal the subsequent letters patent; or, when the King has been deceived or mistaken, he may by *scire facias* repeal his own grant. This does not apply to letters patent for an invention, *scire facias* with regard to which was abolished by the Patents, Designs and Trade Marks Act, 1883, s. 26 (1).

A *scire facias* was sometimes a continuation of a former action, being merely an interlocutory proceeding and in the nature of process or execution, as in the case of a *scire facias quare executionem non* (*infra*); sometimes a proceeding after the action had terminated, as in the case of a *scire facias ad rehabendam terram* (*infra*). The most important recent instance of a *scire facias* of this kind was where it was required to enforce a judgment against the shareholders of a company. By the Country Bankers Act, 1826, s. 13, the Chartered Companies Act, 1837, s. 24, the Companies Clauses Consolidation Act, 1845, and other Acts, if execution had been issued against a company subject to one of those Acts (*e.g.*, a railway company), and the property was insufficient, a *scire facias* might (with certain limitations as to past members, the amount for which each shareholder was liable, obtaining leave of the Court, etc.) be issued against any of the shareholders, requiring them to show cause why execution should not be awarded against their property; but since 1883 the remedy of the creditor has been by way of an application under R. S. C., Ord. 42, r. 23.

The other kinds of *scire facias* in the nature of process or execution are either obsolete or very rare. Thus a simple application to the Court under Ord. 42, r. 23 has been substituted for the *scire facias* formerly required to revive a judgment, or to issue execution on a judgment of *assets quando acciderint*. (See JUDGMENT; REVIVAL.) The following are or were the principal kinds of *scire facias* having distinctive names: A *scire facias ad rehabendam terram* lies to enable a judgment debtor to recover back his lands taken under an

elegit when the judgment creditor has satisfied or been paid the amount of his judgment (see ELEGIT); but simpler means are now available. A *scire facias* in the nature of execution is sometimes required by the Crown, *e.g.*, to issue execution on an office found (q.v.); if it is determined in favour of the Crown, an extent may be issued. (See EXTENT.) Proceedings by way of *scire facias* upon recognizances were abolished by the Crown Office Rules, 1886, r. 127 (116 of the 1906 rules). *Scire facias quare restitutionem non* lies where execution on a judgment has been levied, but the money has not been paid over to the plaintiff, and the judgment is afterwards reversed on appeal; in such a case a *scire facias* is necessary before a writ of restitution can issue, but now, whether the money has or has not been paid over, restitution can be effected on an order of the Court which decides the appeal.

Scire facias ad audiendum errores and *quare executionem non* were writs used in proceedings in error, the first by the plaintiff, the second by the defendant in error, to compel the opposite party to plead; they are both obsolete, error (q.v.) in civil proceedings having been practically abolished in 1875.

Scire facias was sometimes employed in proceedings in the Mayor's Court of London. In proceedings in foreign attachment (q.v.), when a certain period had elapsed after the attachment had been served, the plaintiff was at liberty to issue a *scire facias*, which was a warning to the garnishee to appear to show cause why the plaintiff should not have execution of the money, etc. attached; the garnishee either appeared or suffered judgment to go by default. If in a suit in the Mayor's Court the defendant's property had been attached and execution issued against the garnishee, the defendant could not appear to the plaint in the ordinary course, because the proceedings in attachment were founded on his fictitious default in appearing to the plaint; and therefore, if he wished to dispute the plaintiff's claim, he had to issue a writ of *scire facias ad disprobandum debitum*: when the plaintiff had appeared to the writ the defendant declared, and the action proceeded as in ordinary cases unless the plaintiff prayed *stet billa* (q.v.).

Scire feci. See SCIRE FACIAS.

Scire Fieri Inquiry was a writ issued against an executor against whom judgment had been obtained for a debt due by his testator when the property of the testator had been found insufficient (technically when the sheriff had returned *nulla bona* to a *fi. fa. de bonis testatoris* without returning a *devastavit*), and the executor was supposed to have committed a *devastavit*. It commanded the sheriff that in case there should be no goods of the testator remaining in the hands of the executor, he should summon a jury to inquire if the defendant had wasted the goods of the testator; and if a *devastavit* were found, that he should warn the defendant to show cause why the plaintiff should not have a *fieri facias de bonis propriis* against him. The name is compounded of the names of the three proceedings, *scire facias*, *fieri facias*, and inquiry, of which the process consists. The writ is now obsolete. See DEVASTAVIT; FIERI FACIAS; JUDGMENT.

Scold. The old writers define this as meaning a troublesome and angry woman who, by her brawling and wrangling among her neighbours, broke the public peace and increased discord. Such a woman was anciently indictable at the sheriff's tourn (q.v.), where she was punishable with the cucking-stool (q.v.); but this jurisdiction is now obsolete.

Scotale. An alehouse kept by an officer of the forest, at which inhabitants of the forest had to drink in order to secure the favour of the officer. The keeping of such a house was prohibited by the *Carta de Foresta* (q.v.). The word is derived from *scot*, in the sense of a tax, and *ale*.

Scot and Lot. The inhabitants of a borough who were liable for the rates were anciently described as "paying scot and bearing lot" therein. The reference to such persons in s. 6 of the Disorderly Houses Act, 1751, is now read as a reference to inhabitant ratepayers.

The word "scot" was used alone as meaning a tax. Compare CHURCH SCOT; SCOTTARE; SCOTALE.

See ELECTORAL FRANCHISE.

Scotare; Scottare. To pay scots or customary dues; said anciently of tenants.

"Scraping the Defendant's Conscience." The amendment of the interrogatory part of the old Bill in Chancery in order to make the defendant give plain answers instead of the evasive answers previously given by him.

Scribere est agere (2 *Rol. Rep.* 89). (To write is to act): That is to say, to write anything is to do an overt act within the meaning of the law relating to treason, if the writing be published. In the case in which these words are cited the accused "inclosed *son liver* in a box sealed up and *sic secretment* conveyed it *al Roy*"—which was held to be publication of the manuscript.

Scrip. A scrip certificate (or shortly "scrip") is an acknowledgment by the projectors of a company or the issuers of a loan that the person named therein (or more commonly the holder for the time being of the certificate) is entitled to a certain specified number of shares, debentures, bonds, etc. It is usually given in exchange for the letter of allotment, and in its turn is given up for the shares, debentures or bonds which it represents. Scrip is chiefly used in the case of bonds and shares which are payable by instalments, so that they cannot be issued until all the instalments are paid; therefore as soon as bonds or shares have been allotted to a subscriber or applicant, a scrip certificate, certifying that, on due payment of the unpaid instalments, the bearer will be entitled to receive bonds or shares to the amount of the certificate, is given to the allottee (see ALLOT.) Scrip certificates are negotiable instruments.

There are companies (called scrip companies) in which the scrip is not required to be exchanged for shares, the scripholders being the shareholders. These "unincorporated companies with shares transferable by delivery" (to use the words of Lord Lindley) are, to quote Sir Francis Palmer "in contemplation of law nothing but great partnerships with some special features," and the members are liable in the same way as members of any other partnership.

"Scrip certificate" seems to be a contraction for "subscriptions certificate," that is, a certificate of the amount subscribed for by the applicant.

See COMPANY.

Script, in probate practice, is a will, codicil, draft of will or codicil, or written instructions for the same. If the will is destroyed, a copy or any paper embodying its contents becomes a script, even though not made under the direction of the testator. See AFFIDAVIT.

Scriptæ obligationes scriptis tolluntur, et nudi consensus obligatio contrario consensu dissolvitur (*Jur. Civ.*). (Written obligations are superseded by writings, and an obligation of naked assent is dissolved by naked assent to the contrary.) Compare QUOMODO, ETC.

Scrivener. A scrivener was one who received the money of his clients for investment. Pending its investment, he could use it for his own purposes without having to account for any profits which he might make. He, like a banker, traded in money, and, like other traders, he could be made a bankrupt under the statute 21 Jac. 1, c. 19, s. 2; but it was decided in 1814 that an attorney who occasionally acted as a scrivener could not, *qua* scrivener, be made a bankrupt.

Scriveners ceased to exist as a separate class about 1760. Sched. I. of the Bankruptcy Act, 1869, however, included amongst traders "persons using the trade or profession of a scrivener, receiving other mens monies or estates into their trust or custody." But though there are now no scriveners *eo nomine*, the Scriveners Company of the City of London still exists; and any notary who practises within its jurisdiction must take up the freedom of the Company (Public Notaries Act, 1801, s. 13) at a cost of, in some cases, £6 16s. 3d. and, in others, £14 14s. This explains the fact that there are approximately fifty members of the Company. The jurisdiction of the Company extends over the City of London, the Liberties of Westminster—its hall is at 56, Victoria Place, S.W. 1—the Borough of Southwark, and the area within three miles of the City of London (Public Notaries Act, 1801, s. 13).

Scrope's Inn. See SERJEANTS-AT-LAW.

Scruple. See APOTHECARIES' WEIGHT.

Scrutiny. A scrutiny is an inquiry into the validity of the votes recorded for the successful candidate at an election—whether parliamentary, municipal or local government—and may be claimed if the unsuccessful candidate alleges in his petition that he has in fact a majority of lawful votes. It involves a trial of the validity of each vote objected to.

Sculpture. The work of a sculptor is "artistic work," and is the subject of copyright. See the Copyright Act, 1911, s. 35.

Scutage. Escuage (q.v.).

Scutagio habendo. A writ which anciently lay to enforce the performance of the service obligatory on one who held by escuage (q.v.).

Scute. A fifteenth-century French gold coin worth one-half of the English noble (q.v.): see Rot. Parl. 1 Hen. 6.

Scyldwit. Used in Leg. Hen. 1, as meaning a pecuniary penalty for any wrongdoing.

Sea. See HIGH SEAS; KING'S CHAMBERS; NAVIGATION; TERRITORIAL WATERS. As to the seashore, see FORESHORE; as to sea-walls, see FRONTAGE.

Seal. The formality of affixing a seal to a document is one of the oldest modes of expressing the intention to be bound by it, derived from the times when few persons could sign their own names. It is still a solemn mode of expressing assent to a written instrument, and when done with that intention makes the instrument a deed: the intention is generally expressed by the additional

formality of delivery (q.v.; and see DEED; EXECUTION; SIGN).

Every corporation aggregate must have a common seal (see, for instance, the Companies (Consolidation) Act, 1908, s. 63 (1) (*b*)), for being an invisible body, it cannot manifest its intention by any personal act or discourse, but only acts and speaks by its common seal (see ss. 76, 78, 79 of the same Act), except where it is represented by an officer, agent or attorney, and in a few cases where it would be inconvenient to require the seal, *e.g.*, in everyday matters of business.

As to the seals of the Crown, see GREAT SEAL; PRIVY SEAL: also SIGN MANUAL; SIGNET.

As to the forgery of seals, see the Forgery Act, 1913, s. 5.

Seal Day. Formerly this meant motion day in the Court of Chancery. On motion day the Great Seal was brought into Court for the purpose of sealing motion papers.

Sealer. An officer of the Court of Chancery who sealed writs, etc. According to the Sealer of the year 1798, his attendance was "Perpetual"; he did business at "All Hours" and he had "No Holidays" (*Commons Committees Reports*, 1803, Vol. 13, p. 252): but nevertheless he, along with the Deputy Sealer and the Chaff Wax (q.v.) and the Deputy Chaff Wax, was abolished by s. 23 of the Court of Chancery Act, 1852. See SPIGURNEL.

Sea Letter; Sea Brief. A document which must be carried by every neutral vessel in waters where she is liable to meet the warship of any nation which is at war with another. It is issued by the Government of the State to which the neutral ship belongs, and specifies the name of the master, the name and description of the vessel, her cargo, the port of departure and the port of destination. It is used to protect her from capture.

Seal Fishery Act, 1875. By an Order in Council dated 5th February, 1876, made (in conjunction with certain foreign States) in pursuance of this statute, a close season, beginning 1st January and ending 2nd April in every year, was established for seals of all kinds in an area along and off the east coast of Greenland. Compare GREY SEAL.

Sealing Up. Where a party to an action has been ordered to produce a document, part of which is either irrelevant to the matters in question or is privileged from production, he may, by leave of the Court, seal up that part, if he makes an affidavit stating that it is irrelevant or privileged. The sealing up is generally done by fastening pieces of paper over the part with gum or wafers. But where books are in constant use the party producing them will, as a matter of convenience, be allowed merely to cover up the irrelevant or the privileged parts during the inspection, subject, if so required, to his making an affidavit that nothing relevant has been covered up.

Seal Paper. Before the Judicature Acts there was issued before the commencement of each of the sittings a list—known as the Seal Paper—specifying the business to be done each day in the Courts of the Lord Chancellor, the Master of the Rolls, the Lords Justices, and the Vice-Chancellors.

Seamen. The principal statutory enactments for the protection of seamen are those contained in the portions of the Merchant Shipping Acts (q.v.) requiring agreements for service on board ship to contain certain particulars, and requiring vessels to carry proper provisions, water, lime or lemon juice, and medicines. The enactments with regard to wages, advance notes, etc., are referred to under title ALLOT and ADVANCE NOTE; those with regard to unseaworthy ships are referred to under title SEAWORTHINESS.

For the purpose of the Merchant Shipping Acts, the term seaman includes everyone employed in any capacity on board ship except masters, pilots, and duly indentured and registered apprentices (Merchant Shipping Act, 1894, s. 742). The effect of the Employers' Liability Act; 1880, s. 8, and the Employers and Workmen Act, 1875, s. 13, is to exclude "seamen" from the operation of the Act of 1880; but the term seamen is not defined in either the Act of 1875 or in that of 1880, and must be read in its ordinary colloquial meaning, which is much less comprehensive than that given to it by the Merchant Shipping Act, 1894. Seamen, as well as masters and apprentices, are within the Workmen's Compensation Act, 1906 (see s. 7), provided that they are workmen as defined in s 13 of that Act, which gives the word seaman the same meaning as the Merchant Shipping Act, 1894; and special provisions with regard to them, and also with regard to masters and apprentices, are contained in the National Insurance Act, 1911, s. 48, as amended by the National Health Insurance Act, 1918, s. 27.

Search. In international law, the right of search is the right on the part of ships of war to visit and search merchant vessels during war, in order to ascertain whether the ship or cargo is liable to seizure. Resistance to visitation and search by a neutral vessel makes the vessel and cargo liable to confiscation.

Numerous treaties regulate the manner in which the right of search must be exercised. See CONTRABAND.

Searchers. Officials, known by this name, were appointed under the statute 9 Edw. 3, st. 2, c. 9, to see that no sterling or bullion should be exported, and that no base money should be imported at the various ports.

The term was also applied generally to officers appointed to search ships, etc., for dutiable or contraband goods: see, for instance, the statute 11 Hen. 7, c. 13 See AULNAGER; CUSTOMER; TRONOUR.

Searches. On a contract for the sale of real estate, it is usual for the purchaser, before the completion of the purchase, to examine certain records and registers for the purpose of seeing whether they contain notice of any fact affecting the title to the property. This is called searching for incumbrances. The searches generally made are for judgments, writs, orders, bankruptcies, *lites pendentes*, deeds of arrangement, executions and annuities; also a general search in the Land Registry (if the land is registered), and in the customary court rolls (if the property is copyhold). Sometimes also the register of bills of sale is searched, if any doubt exists as to the pecuniary circumstances of the vendor; and in appropriate cases, search will be made for disentailing assurances or in the index of certificates of acknowledgment by married women Similarly on the sale or mortgage of a ship, the register of ships is searched, to ascertain the condition of the title.

See ANNUITY; JUDGMENT; LIS PENDENS; LAND CHARGE; LAND REGISTRIES.

Search Warrant. At common law this is an order under the hand of a justice of the peace authorising a person therein named to enter a specified building and to seize certain specified goods; and it can be issued only on a sworn information to the effect that the applicant believes that the property in question has been stolen and is in such building. A similar warrant may be issued under s. 103 of the Larceny Act, 1861, to search for property in respect of which it is sworn that an offence under that Act, or under the Larceny Act, 1916, has been committed.

Such a warrant must be in the possession of the person executing it. He can, if need be, enter by force, but he should first demand admission.

Under very many Acts, search warrants may be issued to search for many things ranging from adulterated bread to explosives, or to search for persons such as gamblers in a gaming house or girls detained in a brothel.

Sea-reeve. In ancient times this, according to Spelman, was one who in a seaport looked after the maritime jurisdiction of the lord, kept the foreshore clean, and collected wreck.

Seashore. See FORESHORE.

Seaworthiness. The question whether a ship is or was at a given time seaworthy is chiefly of importance with reference to the liability of the owner and the underwriters or insurers in the event of her loss. In this use of the term, " seaworthiness " means that the vessel is in a fit state, at the time of sailing, as to repair, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured. Where there is no agreement to the contrary, a shipowner who contracts for the conveyance of merchandise in his ship, or contracts for her insurance, impliedly warrants that she is seaworthy; that is to say, if she is lost, and it turns out that she was not seaworthy at the time of sailing, in the one case the owner is liable to the owner of the goods for their loss, and in the other case the insurers or underwriters are discharged from liability under the policy, notwithstanding the *bona fides* and honesty of the shipowner.

If, in the course of proceedings for desertion, it is alleged by one-fourth or, if the crew is over twenty, by five, of the seamen belonging to a ship that by reason of unseaworthiness, overloading, defective equipment, or the like, she is not in a fit condition to go to sea, the Court having cognisance of the case may have the ship surveyed (Merchant Shipping Act, 1894, s. 463). A naval Court (q.v.) may order a survey of any ship which is the subject of investigation (s. 483 (1) (*j*)).

Provision is made by the Merchant Shipping Act, 1894, Part III., for the proper equipment and survey of ships in the interest of passengers.

Every person who sends or attempts to send, or is party to the sending of, or takes a ship to sea in an unseaworthy state, so as to endanger the life of any person on board, is guilty of a misdemeanour, unless he proves that he used all reasonable means to make her seaworthy (Merchant Shipping Act, 1894, s. 457).

Seck is technically applied to certain services and obligations to signify that they create no tenure between the person from whom and the person to whom they are due, as opposed to what Coke calls those services of " homage, fealty, and escuage, which can-

not become secke or dry, but make tenure whereunto distresses, escheats and other profits be incident." At the present day, the term is hardly ever used except in the phrase "rent seck." See RENT.

Secondary. See CONVEYANCE; EVIDENCE; USE. The Secondary of the City of London or, more shortly, the Secondary, is a permanent officer of the Corporation. He holds also the office of High Bailiff of Southwark and receives a salary of £1,300 a year. He occupies a position analogous to that of a sub-sheriff, and he performs, in the name of the sheriffs, duties which would elsewhere devolve upon the sub-sheriff. Down to 1871 there were two Secondaries; now there is only one. Except in the City of London the office of Secondary is obsolete, but formerly an officer immediately subordinate to a principal officer was commonly described as a Secondary, there being the Secondary of the Fine Office, the Secondary of the Office of Privy Seal, etc. There is now the deputy chairman of the Board of Customs and Excise; such an officer, if the ancient terminology were still used, would be the Secondary of the Board of Customs and Excise.

Second Deliverance. See REPLEVIN.

Secretary at War. This was an official whose office dates from the reign of Charles II. He was always a member of one House of Parliament or the other, and had some control over Army finances. He is to be distinguished from the Secretary of State (q.v.) for War, who took over his duties when the Colonial Office was formed in 1854. The office of Secretary at War was formally abolished by the Secretary at War Abolition Act, 1863.

Secretary of Bankrupts. An officer of the Lord Chancellor's. He was abolished by the statute 15 & 16 Vict. c. 77, s. 2.

Secretary of Decrees and Injunctions. One of the officials of the Court of Chancery whose office was abolished by the Court of Chancery Act, 1852, s. 23. The duties were performed in 1798 by a firm of law stationers, who acted as deputies for the holders of the office (*Commons Committees Reports*, 1803, Vol. 13, p. 260).

Secretary of Presentations. See PRESENTATION OFFICE.

Secretary of State. Acts of Parliament frequently speak of "the Secretary of State" as if there were only one. But the expression means "one of His Majesty's Principal Secretaries of State for the time being," unless a contrary intention appears (Interpretation Act, 1889, s. 12 (3)). The Principal Secretaries of State are those for the Home Department, for Foreign Affairs, for the Colonies, for the War Department, for Air, and for India. Not more than five of them, and not more than five of their under-secretaries—each of them has a parliamentary under-secretary—may sit in the House of Commons at the same time (Government of India Act, 1858, s. 4.; Air Force (Constitution) Act, 1917, s. 11). The offices of the Principal Secretaries of State are all included in Sched. H. to the Representation of the People Act, 1867. See OFFICE OF PROFIT.

The first Secretary of State whom we know of was John Maunsell, in the reign of Henry III. The title Principal Secretary of State first occurs in 1476 Soon afterwards the Secretary of State ceased to be a mere writer of the royal orders and became a minister. The Secretary of State for the Home Department — better known as the Home Secretary—is the lineal official descendant of the original Secretary of State, and exercises all of his functions which have not been specifically transferred to the Secretaries of State other than the Home Secretary. Until 1539 there was but one Principal Secretary of State; for the next two hundred years there were only two, one for the Northern Department, who was concerned with the Northern European Powers, and the other, for the Southern Department, who was concerned with the other European Powers, domestic affairs, Ireland and the Colonies.

From 1707 to 1746 there was a third Secretary of State, this being the Secretary of State for Scotland; and from 1768 to 1782 there was a fourth Secretary, this being the Secretary of State for the Colonies, the latter being, as regards the "plantations" (q.v.) the successor of the Board of Trade and Plantations (see BOARD OF TRADE), and being himself replaced in 1782 by the Home Secretary.

In 1782 the Northern Department became the Foreign Office, and the Southern Department became the Home Office with Ireland and the Colonies under its charge. A Secretary of State for War was created in 1794, the Colonies being put under his care. In 1854 two more Secretaries of State, one for India and the other for the Colonies, were created, the Secretary for War being left with only the Army to look after; the Secretary of State for Air was created by the Air Force (Constitution) Act, 1917, s. 8; and that made up the six Secretaries of State now existing.

Down to 1921 the Home Office was, in theory, the channel of communication between

the Crown and the Lord Lieutenant of Ireland, who, in theory, was responsible for the government of that country, but the Home Office had in fact nothing to do with Ireland.

In a well-known annual publication, the Secretary for Scotland is given as one of the Principal Secretaries of State; this is, however, a mistake.

Each Secretary of State can do anything which any one of the others is empowered to do; but for purposes of administrative convenience each of them confines himself to such matters as properly appertain to his own department.

Secretary of the Briefs. An officer (receiving about £80 a year in fees) of the old Court of Chancery whose duty it was to make out "briefs" for applicants (*Commons Committees Reports*, 1803, Vol. 13, p. 262). The brief was a process commanding the sheriff to summon or attach a defendant: see *Termes de la Ley*.

Secret Profits. Profits made by an agent (q.v.), as such, for which he has not accounted to his principal.

Secret Trusts. Where a testator gives property to a person, on a verbal promise by the legatee or devisee that he will hold it in trust for another person, this is called a secret trust. The rule is, that if the secret trust would have been valid as an express trust, it will be enforced against the legatee or devisee, while if it would have been invalid as an express trust, *e.g.*, by contravening the provisions of the Mortmain Act, the gift fails altogether, so that neither the devisee or legatee, nor the object of the trust, takes any benefit by it.

Secta, literally, means a following. The word was chiefly used to denote a service, due by custom or prescription, which obliged the inhabitants of a particular place to make use of a mill, oven, kiln or similar structure (*secta ad molendinum, ad furnum, ad torrale, etc.*). In such a case the owner of the mill, oven or kiln, had an action against any inhabitant who "withdrew his suit," that is, went to another mill, oven or kiln. The theory was that the mill or other structure had been erected by the ancestors of the owner for the convenience of the inhabitants, on condition that they should use it to the exclusion of any other.

In the old common law practice, *secta* meant the followers or witnesses whom the plaintiff brought into Court with him to prove his case. The actual production of the *secta* has been disused since the reign of Edward III.; but the declaration in every action contained a fictitious statement on the subject, until comparatively modern times.

Secta ad curiam, De. A writ which anciently lay against one who failed to perform suit at the Sheriff's County Court or at the Court Baron.

Secta curiæ. Suit and service done by tenants at the Court of the lord.

Secta facienda per illam qui habet enitiam partem, De. A writ which lay to compel the eldest of coparceners to perform suit and service for the others. The eldest had the *enitia pars* (q.v.).

Secta regalis. The obligation to attend twice a year at the Sheriff's Tourn, which was in theory the King's Leet.

Secta unica tantum facienda pro pluribus hæreditatibus. A writ under which a man was exempted from doing more than one suit and service in respect of lands which he held of one lord, not as the heir of one, but as the heir of several.

Sectis non faciendis, De. A writ of exemption from suit and service which lay for a doweress.

Secunda superoneratione pasturæ, De. This was a writ which lay where one against whom a writ of admeasurement had been sued out again surcharged the common (Stat. West. 2, 13 Edw. 1, c. 8). See SURCHARGE.

Secundum naturam est, commoda cujusque rei eum sequi, quem sequuntur incommoda (*D.* 50, 17, 10). (It is natural that the advantages of anything should follow him whom the disadvantages follow.) This is practically the same as *Qui sentit*, etc.

Secured Creditor. See CREDITOR.

Secured Debts. See DEBT.

Securitatem inveniendi quod se non divertat ad partes exteras sine licentia regis, De. Anciently the king could issue against any man a writ requiring him to "find security that he would not betake himself to foreign parts without licence from the king." It was superseded by the writ of *Ne exeat regno* (q.v.).

Securitate pacis, De. This writ of security for the peace anciently issued out of the Chancery for anyone threatened with death or bodily harm by another. The modern procedure is to bind to the peace before a justice.

Security.—I. A security is something which makes the enjoyment or enforcement of a right more secure or certain.

A. With reference to its nature, a security is either a personal security; or a security on property (called in jurisprudence a real security); or a judicial security.

(1) A personal security consists in a promise

tion of the prerogative right to seigniorage never arose in connection with it.

Seignory.—I. A seignory is the relation of a feudal lord to his tenant, and to the land held by him. Thus, if before the statute of Quia Emptores (q.v.), A, a tenant in fee simple, conveyed his land to B to hold of A as his tenant, then A's rights against B in respect of services, fealty, etc., and his interest in the land in the event of an escheat or forfeiture by B or his successors in title, would constitute a seignory. Since the statute of Quia Emptores no seignory can be created. Owing to the feudal incidents of tenure (fealty, etc.) having now become obsolete, and to the rent services anciently reserved having become almost valueless, seignories in freehold land are seldom of any practical importance; in most cases indeed they cannot be traced. (See MORTMAIN.) Consequently almost the only seignories now in existence are those of lords of manors, for a manor does not exist unless there are at least two free tenants, that is, tenants of freehold land forming part of the manor who hold of the lord by a service of some kind. Hence a manor is sometimes said to consist of demesnes and seignories.

A seignory is sometimes distinguished by the services incident to it, *e.g.*, a seignory by fealty and rent-service; or by the position of the lord, *e.g.*, seignories paramount and mesne seignories. (See MESNE; PARAMOUNT.) A seignory may also be either appendant, that is, attached to a manor; or in gross, when it has been severed from the manor to which it originally belonged. On the conveyance of a manor the seignories appendant to it pass with it, a seignory in gross must be conveyed by a deed of grant, a seignory being an incorporeal hereditament. Originally, a seignory differed but little from a reversion.

II. Seignory sometimes means the land or district over which the rights of the lord extend. Compare FRANCHISE; LIBERTY.

Seised in Demesne as of Fee. See DEMESNE.

Seisin; Seised. Seisin is feudal possession; in other words, it is the relation in which a person stands to land or other hereditaments, when he has in them an estate of freehold in possession; such a person is said to be seised of the land. "Seisin" is opposed (1) to "possession," which, in its technical sense, is only applied to leaseholds and other personal property; and (2) to "occupation," which signifies actual possession. See OCCUPATION; POSSESSION.

With reference to its nature, seisin is either actual, or in law. Actual seisin, or seisin in deed, is where the freeholder is himself in possession or occupation of the land, or where it is occupied by a person claiming under him, and not having an estate of freehold in the land, *e.g.*, a lessee for years. Seisin in law is that seisin which an heir has when his ancestor dies intestate seised of land, and neither the heir nor any other person has taken actual possession of the land. Thus, if a man has two farms, Blackacre and Whiteacre, the former of which he lets to a tenant for years, and the latter he occupies himself, then, on his death intestate, his heir has actual seisin of Blackacre from the moment of the death, because the possession of the tenant is looked upon as the possession of the freeholder; but of Whiteacre the heir has merely a seisin in law until he enters and takes possession, and then he has actual seisin of Whiteacre too. The term "seisin in law" is sometimes applied to the interest of a reversioner or remainderman expectant on an estate of freehold, but inaccurately, because the seisin is in the tenant of the estate of freehold. Actual seisin of incorporeal hereditaments is obtained by exercising the rights of which they consist, *e.g.*, receiving a rentcharge or presenting to an advowson.

With reference to the nature of the property, a tenant in fee simple is said to be seised in his demesne as of fee "of such things whereof a man may have a manuall occupation, possession or receipt, as of lands, tenements, rents and such like. . . But of such things which do not lie in such manuall occupation, etc., as of an advowson of a church and such like, there he shall say that he was seised as of fee and not in his demesne as of fee." The distinction was of importance only under the old system of pleading. See DEMESNE.

Since the abolition of the rules as to descent cast and "*seisina facit stipitem*" (q.v.), and the introduction of modern forms of conveyance, which do not require livery of seisin (q.v.), the doctrine of seisin has lost almost all its importance. Under the old law, when an heir obtained seisin of land on the death of his ancestor, and then himself died intestate, the land went to his heirs and not to the heirs of his ancestor. This was called a "mesne seisin," because it was intermediate between the two deaths, and the heir was called a "mesne heir" or "mesne person." See POSSESSIO FRATRIS.

Another kind of seisin was the "simple seisin" spoken of by Britton (178 *b*), namely, that nominal or formal possession which a lord

was entitled to take on the death of a tenant in fee simple in order to assert his right of seignory, as opposed to the full or beneficial seisin of the tenant's heir. This has long been obsolete.

Quasi-seisin is the possession which a copyholder has of the land to which he has been admitted. The freehold in copyhold lands being in the lord, the copyholder cannot have seisin of them in the proper sense of the word, but he has a customary or *quasi*-seisin, analogous to that of a freeholder.

Equitable seisin is analogous to legal seisin, that is, it is seisin of an equitable estate in land. Thus, a mortgagor is said to have equitable seisin of the land by receipt of the rents. See DISSEISIN; POSSESSION. Actual possession, clothed with the receipt of the rents and profits, is the highest instance of an equitable seisin.

Seisina facit stipitem (*Fleta*, 6; c. 14), in the law of descent means "seisin makes the stock of descent." The old rule used to be that when a person died intestate as to his land, it descended to the heir of the person who was last seised of it. Now descent is traced from the last purchaser. See DESCENT; NON JUS, ETC.

Seisina habenda, De. The fuller title of this writ was *De seisina habenda quia rex habuit annum, diem, et vastum.* (For having seisin because the King is entitled to a year, a day and waste.) This was the writ by which the king anciently enforced his right to year, day and waste (q.v.).

Seisin, Covenant for. In a conveyance of an estate in fee simple this was a covenant to the effect that the vendor was, at the date of the conveyance, seised of a good and indefeasible estate of inheritance in fee simple. This came in course of time to be generally omitted, as it was always followed by a covenant for the right to convey in fee simple; and the latter covenant was in itself sufficient for all purposes. See COVENANT.

Seizure. In the law of copyholds, seizure is where the lord of copyhold lands takes possession of them in default of a tenant. It is either seizure *quousque*, or absolute seizure. When a copyhold tenant dies intestate, his heir is bound to come to the lord for admittance within a certain time, and pay the fine on admittance; if he does not appear, the lord may seize the land *quousque* (*i.e.*, "until" he does appear), and enjoy the rents and profits in the meantime. Where the lord seizes land for a forfeiture, escheat, etc., this is an absolute seizure. The lord may also take heriots by seizure, and the same remedy is given for things which lie in franchise, as waifs, wrecks, estrays, etc.

In the law of procedure, seizure is sometimes a species of execution. Thus, a sheriff executes a writ of *fi. fa.* by taking possession of the chattels of the debtor. (See FIERI FACIAS.) Seizure also takes place when goods are confiscated as a punishment for smuggling or carrying contraband of war.

Selborne's Act, Lord. A popular title of the Powers of Appointment Act, 1874.

Selden. John Selden was born in 1584, and died in 1654. He wrote *Mare clausum*, in reply to the *De mari libero* of Grotius (q.v.); *Dissertatio historica ad Fletam; Notes on Fortescue*; and numerous other works on tithes, titles of honour, etc.

Select Committee. See COMMITTEE.

Self-defence. See HOMICIDE.

Self-raising Flour. See BREAD.

Selion. This seems to have been the strip of uncultivated land lying between the parts of open fields which, before the general enclosure of the country, were allotted to different persons.

Semble. "It appears." Used in judgments and text-books to introduce a proposition of law which is not intended to be stated definitely.

Semper in dubiis benigniora præferenda (11 *Moo. P. C. C.* 343). (In doubtful matters the more liberal construction should always be preferred.) This, said Lord Justice Knight Bruce, "we believe as true in the law of England as it was in the Roman law."

Semper in obscuris, quod minimum est sequimur (*D.* 50, 17, 9). (In obscure matters we should always follow that which is the least obscure.) But where the words of a document are obscure to such a degree that they have no meaning, the Court will not invent a meaning. Compare AMBIGUITY.

Semper ita fiat relatio ut valeat dispositio (6 *Rep.* 76). (A word is, if possible, always made to relate back to antecedent words in such a way as to give effect to a disposition in a will.) This maxim is part of a much longer maxim quoted in connection with the construction of a will.

Semper paratus. (Always ready.) In an action of *assumpsit* (q.v.) the form in which tender was pleaded was known as a *semper paratus*. Compare UNCORE PRIST.

Semper præsumitur pro legitimatione puerorum. (It is always to be presumed that children are legitimate.) This *dictum* is a condensed version of passages from Bracton which

are quoted at *Co. Litt.* 126. Compare FILIATIO NON, ETC.

Semper præsumitur pro negante (10 *Cl. & F.* 907). (The presumption is always in favour of the negative)—when a Court is equally divided. See PARIBUS SENTENTIIS, ETC.

Semper specialia generalibus insunt (*D.* 50, 17, 147). (Specialities are always included in generalities.) Compare GENERALIA SPECIALIBUS, ETC.; SPECIALIA GENERALIBUS, ETC.; MAJUS CONTINET, ETC.

Seneschal. A steward. We read of the High Seneschal, that is to say, the Lord High Steward (q.v.), and the *Seneschal de la Hotel de Roy*, that is to say, the Lord Steward of the King's Household. (q.v.).

Seneschallo et mareshallo quod non teneant placita de libero tenemento. A writ which lay to the Court of the Marshalsea (q.v.) prohibiting it from entertaining any action relating to freehold.

Senior. The expression "senior counsel" (or "senior") means a barrister who is a King's Counsel. Compare JUNIOR.

Sentence, in ecclesiastical procedure, is analogous to judgment (q.v.) in an ordinary action. A definitive sentence is one which puts an end to the suit, and regards the principal matter in question. An interlocutory sentence determines only some incidental matter in the proceedings.

"Sentence" is commonly used to signify the judgment in a criminal proceeding. See JUDGMENT.

Upon a conviction on indictment of several offences, whether on separate indictments or on separate counts in the one indictment, the Court may, in general, order that the sentences be either consecutive or concurrent; but sentences of imprisonment and of penal servitude cannot be concurrent. Upon summary conviction at the one time of several offences, justices may order that not more than two terms of imprisonment be consecutive (Summary Jurisdiction Act, 1848, s. 25), but if the sentences are for assaults they may not in the aggregate exceed six months (Summary Jurisdiction Act, 1879, s. 18).

See DECREE.

Sententia contra matrimoniam nunquam transit in rem judicatam (7 *Rep.* 43). (A sentence against marriage never becomes *res judicata.*) But this maxim is cited merely in argument, and it is, in fact, the reverse of the truth; for the judgment of a matrimonial Court is conclusive.

Sententia interlocutoria revocari potest, definitiva non potest (*Bac. Max. Reg.* 20). (An interlocutory sentence may be recalled, but not a final.) This is a rule of the civil law which is quoted to illustrate ACTUS INCEPTUS, ETC.

Sententia non fertur de non liquidis (*Jenk. Cent.* 7). (A Court does not decide except upon clearly defined points.) Compare OPORTET, ETC.

Separate Estate; Separate Use. Separate estate, or property belonging to a woman to her separate use, is property which belongs to a married woman as if she were a *feme sole.* The doctrine of separate estate may be described generally as giving a married woman the power of acting with respect to her separate property as if she were a *feme sole*; thus she is entitled to the income of it, and may dispose of it by deed or will, and mortgage or charge it without the concurrence or consent of her husband, unless she is restrained from anticipation or alienation. (See ANTICIPATION; RESTRAINT ON ALIENATION.) Her separate estate is liable for all engagements contracted by her with reference to and on the credit of it. See ENGAGEMENT.

Property may become the separate estate of a married woman either by provision of the party or under a statute. It may be settled upon her, or devised, bequeathed or otherwise given to her to her separate use, whether by a stranger or by her husband, and whether it is given to trustees for her or not, and whether it is given to her absolutely or subject only to a power of appointment by her. Where the legal estate in the property is vested in the husband, he is a trustee for her. Property becomes the separate estate of a married woman by statute (i) under the Married Women's Property Acts; (ii) under a decree of judicial separation (q.v.); (iii) under a protection order (q.v.); or (iv) under a separation order (q.v.).

Now, under s. 2 of the Married Women's Property Act, 1882, every woman married after 1st January, 1883, holds as her separate property everything which she had before marriage or acquired after it: and under s. 5, every woman married before the same date holds as her separate property everything her title to which accrued due after that date.

Where property is given to a married woman to her separate use absolutely (that is, without a limitation over after her death), and she dies without having disposed of it, her husband takes it *jure mariti.* See JUS MARITI.

As to the separate estate of partners, see JOINT.

See COVERTURE; ENGAGEMENT; USE.

Separation. A provision or agreement for the future separation of a husband and wife is void, being in derogation of the marriage contract. See DEROGATION.

An agreement for immediate separation is valid, because it is made to meet a state of things which, however undesirable in itself, has in fact become inevitable. An agreement of this kind generally takes the form of a separation deed.

See JUDICIAL SEPARATION; SEPARATION ORDER.

Separation Deed. Owing to the rule that a wife cannot in general contract with her husband, the deed is made between the husband and a trustee for the wife, and generally contains provisions for the allowance by the husband of an annuity for the wife, for his indemnification by the trustee against the wife's debts, for the custody and education of the children, etc. It follows from the nature of a separation deed, that it is avoided by subsequent reconciliation and cohabitation, but while it remains in force, it is a bar to a suit for restitution of conjugal rights.

Separation Order. Where a husband is convicted of an aggravated assault (q.v.) upon his wife, or has deserted her (see DESERTION), she may obtain from a Court of summary jurisdiction an order popularly known as a separation order (Summary Jurisdiction (Married Women) Act, 1895, s. 4), as to the terms of which, see DESERTION. And either a husband or a wife may obtain such an order on the ground that the other of them is a habitual drunkard within the meaning of the Habitual Drunkards Act, 1879, s. 3 (Licensing Act, 1902, s. 5). Where the order is made in favour of the wife and gives her custody of any child it may (in addition to the provisions mentioned under DESERTION) include a provision that the husband shall pay not more than ten shillings a week for the maintenance of each such child until it attains the age of sixteen (Married Women (Maintenance) Act, 1920).

Septuagesima Sunday. The Sunday which is twenty-one days before Quadragesima Sunday (q.v.).

Sequatur suo sub periculo. A writ (the title of which meant "Let him come or take the consequences") anciently used where three successive summonses *ad warrantizandum* (to warranty (q.v.)) had been ineffectual.

Sequela causæ. A cause or action.

Sequela curiæ. Anciently this meant suit of Court, that is to say, the Court of the lord.

Sequela villanorum. Everything that villeins (q.v.) had. Where a lord sold his villein he sold "*nativum meum cum tota sequela sua*" and the *sequela* included the children of the villein.

Sequendum et prosequendum. Anciently this meant to prosecute a cause or action. Thus a guardian was admitted "*ad prosequendum*" for his ward.

Sequestrari facias is a writ issued for the purpose of enforcing a judgment against a beneficed clergyman, when a *fi. fa.* has been issued and returned *nulla bona* (Ord. 43, r. 3). It commands the bishop (see Ord. 43, r. 4) of the diocese to enter into the benefice and sequester the rents, tithes, and profits until the debt is satisfied. The bishop executes the writ by issuing a sequestration (q.v.; see LEVARI FACIAS; WRIT).

Sequestration; Sequestrator. A sequestration is where, by some judicial or *quasi*-judicial process, property is temporarily placed in the hands of one or more persons called sequestrators, who manage it and receive the rents and profits.

In the procedure of the High Court of Justice, a sequestration is a means of enforcing obedience to a judgment or order requiring a person to do an act (*e.g.*, pay money into Court, deliver up a chattel, etc.). As to the cases in which it is issued, see Ord. 42, rr. 4, 6, 31; Ord. 43, rr. 6, 7. It can be issued against a debtor as if he had been arrested (Debtors Act, 1869, s. 8). It is a writ or commission directed to certain persons (usually four in number and one of them being usually a sheriff's officer) nominated by the person prosecuting the judgment, and empowering them to enter upon the real estate of the disobedient person, and receive the rents and profits thereof, and take his chattels, and keep them in their hands, until he performs the act required. The sequestrators are officers of the Court, and are bound to account for what they receive. See WRIT OF ASSISTANCE.

When a *fi. fa. de bonis ecclesiasticis* or a *sequestrari facias* (see those titles) is directed to a bishop, he issues a sequestration, which is in the nature of a warrant addressed to the churchwardens, requiring them to levy the debt out of the profits of the debtor's benefice.

In ecclesiastical law, where a benefice becomes vacant, a sequestration is usually granted by the bishop to the churchwardens, who manage all the profits and expenses of the benefice, plough and sow the glebe, receive tithes, and provide for the necessary cure of souls. They are bound to account for the profits to the new incumbent. Sequestration is also usually granted in a cause of spoliation

(q.v.), or as a punishment (*e.g.*, for non-residence), or as a mode of compelling payment of money for dilapidations, or the like.

In the Mayor's Court of London, a sequestration was an attachment of the property of a person in a warehouse or other place belonging to and abandoned by him. It had the same object as the ordinary attachment, viz. to compel the appearance of the defendant to an action, and in default to satisfy the plaintiff's debt by appraisement and execution. See FOREIGN ATTACHMENT.

Sequestration, Writ of. See SEQUESTRATION; ASSISTANCE.

Serjeants-at-Arms are officers of the Crown, whose duty is nominally to attend the person of the Sovereign, to arrest traitors, to attend the Lord High Steward (q.v.) when sitting in judgment on traitors, and the like. "Two of them," says Blount, writing in 1670, "by the king's allowance, do attend on the two Houses of Parliament, whose office in the House of Commons is the keeping of the doors and (as of late it hath been used) the execution of such commands, especially touching the apprehension of any offender, as that House shall enjoyn him. Another of them attends on the Lord Chancellor or Lord Keeper, in the Chancery, and one on the Lord Treasurer of England." The Serjeant-at-Arms of the House of Lords attends the Lord Chancellor or other person acting as Speaker of that House; this is his only duty as an official of that House except, very occasionally, the attachment of offenders: but he also invariably holds the unpaid office of Lord Chancellor's Serjeant-at-Arms, and in the latter capacity he is the "Serjeant-at-Arms attending the Court" of each of the Judges of the Chancery, and may be ordered by any of them to enforce orders as to the custody of wards or to arrest persons in contempt.

Serjeants-at-Law were barristers of superior degree, to which they are called by writ under the Great Seal. They formed an Inn called Serjeants' Inn. Formerly they were supposed to serve the Crown (hence their name, serjeants or *servientes ad legem*); but in more modern times the degree was conferred on eminent counsel as a distinction, without reference to their services to the Crown. Serjeants had precedence over junior barristers; but only serjeants with patents of precedence (q.v.) took precedence of King's Counsel. They formerly had a right of exclusive audience in the Court of Common Pleas, which was abolished in 1846 by the statute 9 & 10 Vict. c. 54; an attempt to do this by royal warrant under the Sign Manual had been declared illegal in 1840. When a serjeant was appointed, it was customary for him to appear in the Court of Common Pleas and to go through the form of opening a real action by reading the "count" (q.v.) therein: this was called "counting." It was also customary for him to present gold rings, bearing a motto, to the other serjeants; this was called "giving rings." Of late years the degree of King's Counsel (q.v.), or Queen's Counsel, had gradually supplanted that of serjeant, and the abolition (by s. 8 of the Judicature Act, 1873), of the rule requiring every judge of the superior Courts of common law to be a serjeant made the extinction of the order of serjeants merely a question of time.

For some unknown period at some unknown date before 1497, the serjeants had, as an Inn, certain premises opposite the Church of St. Andrew in Holborn. These premises were subsequently known as Scrope's Inn. They were, in 1497, the property of Lord Scrope. From 1443 to 1758 the serjeants held, as an Inn, the buildings in Fleet Street which are still known as Serjeants' Inn. When the last renewal of the Fleet Street lease expired in 1758, the serjeants who had lived in that Inn migrated to the other Serjeants' Inn in Chancery Lane. The Chancery Lane Inn (known as Old Serjeants' Inn) was held from 1416 upon a series of leases renewed from time to time, until in 1854 the freehold was acquired from the Bishop of Ely. Old Serjeants' Inn was sold in 1877, and the proceeds were divided among the serjeants. The site is now occupied by Nos. 5, 6 and 7, Chancery Lane.

Lord Lindley, who became a serjeant in 1875 and died in 1921, was the last survivor of the Order of the Coif. That was the collective title of the serjeants: see COIF.

See FARYNDON INN.

Serjeanty (Norman-French, *serjantie*, from Latin, *serviens*, a servant) literally means service. "*Serjeantia idem est quod servitium*," says Coke.

See GRAND SERJEANTY; PETTY SERJEANTY.

Sermo est animi index (3 *Bulst.* 260). (Speech discloses what is in the mind.) Compare OS DEMONSTRAT, ETC.

Sermones semper accipiendi sunt secundum subjectum materiam et conditionem personarum. (Words are always to be taken in the sense which they would ordinarily have in relation to the subject-matter and to the occupation of the persons spoken of.) Thus the word "layman" ordinarily means one who is not a clergyman: but it means one who is

not a barrister or a solicitor when, for instance, it is said that laymen are in general not acquainted with such and such a proposition of law.

Sermo relatus ad personam intelligi debet de conditione personæ. (Words referring to any man must be taken as referring to him in his occupation.) Thus to say of an attorney that he deals corruptly, means *prima facie* that he does so *qua* attorney.

Servage. There was said to be servage when tenants, besides paying rent, had to provide labour for the lord. In the law of tenure it was in fact a particular kind of service (q.v.).

Service.—I. In the law of tenure, a service is a duty due from a tenant to his lord. Services are or were of various kinds.

Divine or spiritual services are services of a religious nature, either certain, as in the case of tenure by divine service (q.v.), or uncertain, as in the case of frankalmoign (q.v.). Temporal services are services which can be performed by a secular person, and were formerly either (1) free, namely such as were not unbecoming the character of a soldier or a freeman to perform, as to serve under his lord in the wars, to pay him rent, etc. (see RENT), and also those incident to tenure in grand serjeanty (q.v.); or (2) base or villein services, namely such as were fit only for peasants or persons of a servile rank, as to plough the lord's land, to make his hedges. Certain services were such as were fixed in quantity, as to pay a certain rent, or to plough a field for three days every year; examples of uncertain services were, to do military service, or to plough the lord's land when called upon. Accidental or casual services are wardship, relief, heriots and other things, more commonly called incidents (q.v.). In the tenure of knight-service, some services due by the tenant were called foreign, *servitia forinseca*, because they were due to the king and not to the lord: such was the military service in the field due by a tenant by knight's service. See FOREIGN.

Customary services arose by immemorial custom, as where the inhabitants of a place had from time immemorial been accustomed to grind their corn at a certain mill: such a custom gave rise to the obligation on the part of the mill-owner to maintain the mill and all provisions for grinding (servants, etc.), and on the part of the residents to take their corn to be ground there and not elsewhere. See SECTA; SUBTRACTION.

II. In the law of contract, service is the relation between master and servant. A contract by which one person binds himself to serve another is called a contract of service. As to the rights and duties arising from such a contract, see MASTER AND SERVANT.

In order to support claims for damages against seducers and abductors, the definition of "service" has been somewhat strained; thus, if a daughter lives with her father, this is a sufficient service to support an action by the father against a man who seduces her. See SEDUCTION.

III. In procedure, service is the operation of bringing the contents or effect of a document to the knowledge of the persons concerned. It is of two kinds. Writs of summons, orders for disobedience to which process of contempt may be issued, and some other judicial documents, require either direct or substituted service. Direct service is effected by actually bringing the document to the person or thing to be served. In the case of a person such service is called personal. Thus, in an ordinary action, personal service of the writ of summons is effected by showing the original writ to the defendant, and tendering him a copy. An example of direct service on a thing (which might be called real service) occurs in an ordinary admiralty action *in rem* against a ship; here (Ord. 9, r. 12) service of the writ of summons is effected by nailing the original writ for a short time to the mast of the vessel, and taking it off, leaving a copy nailed in its place. Analogous to this is the mode of serving a writ for the recovery of land in the case of vacant possession; here (Ord. 9, r. 9) a copy of the writ is posted on some conspicuous part of the property; this mode of service also partakes of the nature of substituted service.

Service (out of the jurisdiction) of a writ of summons, or of notice thereof, is dealt with in Ord. 11; and r. 8A of that Order deals with the like service in the case of origination summonses and other origination proceedings.

The object of substituted service is to provide the best means available under the circumstances for bringing the effect of the document to the knowledge of the party, when he is keeping out of the way, or his whereabouts is not known. The usual mode of effecting substituted service is by directly serving the document on some person likely to bring it to the knowledge of the party (*e.g.*, his wife, agent, etc.), or by advertising notice of it, or by sending a copy by post to the party's address: see Ord. 10, and notes thereto, and Ord. 67, rr. 5, 6. See NOTICE; NOTICE OF WRIT.

Analogous to substituted service is the practice called "accepting service," which is done by the solicitor for the party to be served giving a personal undertaking (generally written on the original writ) that he will enter an appearance for him, in order to save his client from the annoyance of being personally served: see Ord. 9, r. 1.

Certain documents which are merely the foundation for other proceedings do not require direct or substituted service, but are left at the address of the person for whom the document is intended, or of his solicitor, if he is represented by a solicitor. (See ADDRESS FOR SERVICE.) Summonses, notices of motion, petitions, and certain other documents, are served in this manner; if served after 6 o'clock P.M. on ordinary days (or after 2 P.M. on Saturdays), the service counts from the following day (or Monday) (Ord. 64, r. 11). As to pleadings, see DELIVERY.

Service Franchise. A franchise which existed under the Representation of the People Act, 1884, s. 3. See ELECTORAL FRANCHISE.

Serviens ad legem. See SERJEANT-AT-LAW.

Servient Tenement. See EASEMENT.

Servitia personalia sequuntur personam (2 *Inst.* 374). (Personal services follow the person.) Quoted by Coke as showing that where there was a lord paramount, a mesne lord and a tenant, and the mesne lord had made default in rendering the customs and services due to the lord paramount, then the customs and services to be rendered to the lord paramount (Statute of Westminster II. c. 9) by the tenant in order to obviate distraint did not include services, such as homage, fealty, etc., which were annexed to the person of the mesne lord. See MESNE.

Servitiis acquietandis, De. This would appear to have been a writ by means of which in early times a tenant obtained redress when he had been distrained for services by a lord to whom he owed no service.

Servitium. In the law of tenure, this meant service. It might be *servitium intrinsecum* or *servitium forinsecum* (see FORINSECUS), *servitium liberum* (see SERVICE) or *servitium regale* where he who held from the king had *jura regalia* (q.v.).

Servitors of Bills. Messengers sent by the Marshal of the King's Bench to serve bills or writs. See the statute 2 Hen. 4, c. 23.

Servitude. This means such apprenticeship as gives a right of admission to the freedom of a borough or to the City Companies. See FREEDOM; CITY COMPANIES.

Seskyn; Sesken. The same as suskin (q.v.).

Session. The period between the opening of Parliament and its prorogation (q.v.).

As to the Court of Great Sessions, see WALES.

See PETTY SESSIONS; QUARTER SESSIONS.

Session of the Peace is a sitting of justices of the peace for the exercise of their powers. There are four kinds, petty, special, quarter and general sessions (see those titles).

Set. See BILL OF EXCHANGE.

Set-off. In an action to recover money, a set-off is a cross claim for money by the defendant, for which he might maintain an action against the plaintiff, and which has the effect of extinguishing the plaintiff's claim *pro tanto*, so that he can only recover against the defendant the balance of his claim, after deducting what is due by him to the defendant (Ord. 19, r. 3). Thus, if A sues B for £100, while he owes B £75, a set-off would have the effect of reducing A's claim to £25. The object of this is to prevent cross-actions. See CIRCUITY OF ACTION.

The right of set-off was introduced by the statutes 2 Geo. 2, c. 22, and 8 Geo. 2, c. 24; but was restricted to mutual debts. Under the Judicature Acts mutual claims of any kind, whether for debts or damages, can be set off against one another; but in practice the term "set-off" is generally applied to mutual debts or claims for liquidated amounts, so that one can be deducted from the other: while cross claims in respect of damages, which are unliquidated, are distinguished as "counter-claims" (q.v.).

As to the limitation of a set-off or counterclaim, see LIMITATION.

In the practice of the old common law Courts, where there were cross judgments in the same or different actions, in the same or different Courts, between parties substantially the same, whether for debt (or damages) and costs, or for costs alone, either party might set off the amount of his judgment against that of the other by obtaining a rule or order to enter satisfaction in both actions for the amount of the smaller debt. This practice was made obsolete by the full powers of set-off given by the Judicature Acts.

As to set-off in the County Court, see County Court Rules, Ord. 10, rr. 2, 10-21.

As to set-off in bankruptcy, see MUTUAL CREDITS.

See COUNTERCLAIM.

Settle.—I. To settle property is to limit it, or the income of it, to several persons in succession, so that the person for the time being in the possession or enjoyment of it has

no power to deprive the others of their right of future enjoyment. See SETTLEMENT.

II. The term "settle" is also applied to paupers. See SETTLEMENT.

III. To settle a document is to make it right in form and in substance. Documents of difficulty or complexity, such as mining leases, settlements by will or deed, partnership agreements, etc., are generally settled by counsel. (See CONVEYANCER.) In some cases a document requires to be settled by a judge or judicial officer; thus, when issues are directed to be prepared in an action, and the parties cannot agree on them, they are settled by the judge (Ord. 33, r. 1). In Chancery practice every order (except orders for time and a few others) is settled by the registrar in the presence of the parties, unless they agree as to its form, in which case the "settling" consists in their signing the draft as approved. See MINUTES; PASS; REGISTRAR.

Settled Account. See ACCOUNT SETTLED.

Settled Land. The Settled Estates Act, 1877, repealed all the earlier enactments enabling settled land to be sold, that is to say, the Acts 19 & 20 Vict. c. 120 (The Leases and Sales of Settled Estates Act, 1856); 21 & 22 Vict. c. 77; 27 & 28 Vict. c. 45; 37 & 38 Vict. c. 33, and 39 & 40 Vict. c. 30. Apart from those Acts, the earliest of which was passed only in 1856, settled land could be sold only under an express power of sale in a settlement or under the authority of a special Act of Parliament. The Act of 1877 enables the tenant for life (see TENANT FOR LIFE) of settled land (that is (see s. 2), of land limited to or in trust for any persons by way of succession) to grant leases not exceeding twenty-one years (subject to certain restrictions as to the amount of rent, etc.), so as to make them binding on the reversioner (ss. 46, 47). It also empowers the Chancery Division of the High Court (1) to authorise long leases of settled land (s. 4); (2) to order sales of settled land, or of timber on settled land (s. 16); and (3) to direct any part of a settled estate to be laid out for streets, gardens, sewers, etc. (s. 20). Provision is made for giving notice to the persons interested of any application to the Court under the Act (s. 24).

This Act is still on the statute book, but it is now of little importance. The Settled Land Acts, 1882, 1884, 1887, 1889 and 1890 (collectively entitled the Settled Land Acts, 1882 to 1890) have replaced it in practice. A tenant for life can himself now give building leases for ninety-nine years, mining leases for sixty years, and other leases for twenty-one years (Act of 1882, s. 6), except as regard the principal mansion house and its park; and he can himself, with the like exception, sell any part of the settled land (*ib.* s. 4), but the principal mansion house and its park cannot be sold or leased without the consent of the trustees of the settlement or an order of the Court (Act of 1890, s. 10). The tenant for life is, in fact, now given practically all the powers which an absolute owner generally exercises, but any money realised upon a sale or (Act of 1884, s. 4) received as a fine for a lease must (Act of 1882, s. 22) be paid at the option of the tenant for life either to the trustees of the settlement or into Court to be invested according to his directions in such securities as are specified in s. 21 of the Act of 1882, and (s. 22) to be held upon the same trusts as those contained in the settlement. The Settled Land Acts, 1882 to 1890, apply to every settlement whether made before or after 1882 (Act of 1882, s. 2 (1)).

The Conveyancing Act, 1881, s. 41, makes land to which an infant is absolutely entitled "settled land" for the purposes of the Settled Estates Act, 1877; and s. 42 provides for the management of such settled land, if the settlement came into operation after 1881 and expresses no contrary intention. The Settled Land Act, 1882, s. 59, provides that (for the purposes of that Act) land to which an infant is absolutely entitled shall be deemed "settled land."

Under the Settled Land Act, 1882, s. 21 (iii), moneys arising from sales, etc., in pursuance of that Act may, with (s. 26) the approval of the Court or of the trustees, be applied in payment for the improvements authorised by s. 25 thereof, as extended by s. 13 of the Settled Land Act, 1890; such improvements include many in addition to those specified in the IMPROVEMENT OF LAND ACTS (q.v.).

Settlement.—I. A settlement is an instrument by which property, or the enjoyment of property, is limited to several persons in succession. (See SETTLE.) Generally, the word "settlement" implies a deed or an instrument equivalent to a deed (such as articles or agreement for a settlement); but a settlement may be and often is made by will, and occasionally by private Act of Parliament.

The Settled Land Act, 1882, s. 2 (1), provides that, for the purposes of that Act, a settlement may consist of any number of documents under which land stands limited to, or in trust for, any person by way of succession. As the result of the decision in [1893],

2 Ch. 345, the settlement constituted by any such documents came to be described as a "compound settlement"; and the term has since been in common use.

The most important kinds of settlements are: marriage, or ante-nuptial settlements, post-nuptial and voluntary settlements, and family settlements, more usually called re-settlements (q.v.). Settlements are also sometimes directed by a Court to be entered into by the parties to a proceeding, such as those ordered by the Chancery Division upon the marriage of wards of Court, and, less frequently, the settlement which the Court in a matrimonial case may (under the Matrimonial Causes Act, 1859, s. 45, or the Matrimonial Causes Act, 1884, s. 3) order a wife who is in fault to make in favour of her husband or her children if she has property of her own. There is also the *quasi*-settlement which the Court itself, after a final decree of nullity or dissolution of marriage, may make by way of varying (under the Matrimonial Causes Act, 1859, s. 5, or the Matrimonial Causes Act, 1878, s. 3) any settlement or settlements in favour either of the children of the marriage or of one or other of the parties to the marriage.

A marriage, or ante-nuptial settlement, as its name implies, is an instrument executed before a marriage, and wholly or partly in consideration of it, for the purpose of regulating the enjoyment and devolution of real or personal property. Such settlements are sometimes distinguished as real and personal settlements, a real settlement being one in which the property is throughout treated as land, so that if a person entitled under it dies, his share goes to his heir or devisee, while a personal settlement is one in which the property is either personalty, or realty directed to be turned into money, and therefore treated as personalty. See CONVERSION.

An ordinary settlement of personalty or realty directed to be sold (the object of which is to make an equal provision for all the children) consists of a conveyance of (or agreement to convey) the property to trustees, to be held by them in trust for the settlor until the marriage takes place (which generally is a few hours after the execution of the settlement); followed by a declaration of the trusts on which it is to be held after the marriage, namely, to pay the income to the husband for life (assuming that the property is brought into trust by him), and after his death to the wife for life, and after the death of the survivor to hold the property in trust for the issue of the marriage in such shares as the husband and wife jointly, or the survivor of them, shall have appointed, or in default of and subject to any appointment upon trust for all the issue who attain twenty-one, or (being daughters) marry, in equal shares, with an ultimate trust, by which, if there is no issue of the marriage, the property reverts to the husband or settlor. If the property is brought into settlement by the wife, the income is first given to the wife for her life for her separate use, generally with a restraint on anticipation (q.v.). In addition to these, the fundamental clauses, there are provisions as to the securities in which the trustees are to be at liberty to invest the settled property; covenants to settle after-acquired property (*infra*); hotchpot, advancement clauses; and provisions for the appointment of new trustees (see the various titles, and ACCUMULATION; MAINTENANCE).

A marriage settlement of real property, where the object is to retain the estate in the family (hence sometimes called a family settlement, or, more commonly, a strict settlement) has, in the most simple case, where the intended husband is seised in fee of the property, the following principal objects:—"First, to make provision for the wife: this is effected by securing the payment to her of two annuities; the one, payable during her husband's lifetime, called 'pin-money'; the other, payable after his death, called a 'jointure.' Second, to provide for the payment of gross sums of money, called 'portions,' to such of the younger children of the marriage as attain majority. Third, to provide that the property charged with these provisions for the wife and younger children should go as a whole to the eldest son." These objects are effected by limiting a long term to trustees to secure the pin-money, followed by another long term to other trustees to secure the jointure; followed by another long term to secure the portions; subject to these terms, the land is limited to the husband for life, with remainder to the sons of the marriage successively in tail; failing sons and their issue, it is limited to the daughters as tenants in common in tail, and failing daughters and their issue, it is limited to the settlor in fee.

A marriage settlement often contains a covenant by the husband or wife to settle all property exceeding a certain amount in value which shall be acquired by him or her after the marriage. Such a covenant generally binds the covenantor to settle not only property in which he (or she) has no interest at the time of the marriage, but also interests

which were contingent, and, in some cases, even vested at the time of the marriage, such as reversions.

Voluntary settlements are settlements made otherwise than for valuable consideration. (See VOLUNTARY.) A post-nuptial settlement (*i.e.*, one made by a husband on his wife or family after the marriage without some new consideration) is a voluntary settlement. Formerly, under the statute 27 Eliz. c. 4, a voluntary settlement of land was defeated by a subsequent conveyance by the settlor to a purchaser for value, but the Voluntary Conveyances Act, 1893, provides that no voluntary conveyance of any date, which was made in good faith and without fraudulent intent, shall be liable to be defeated by any later conveyance made after 28 June, 1893. A voluntary settlement of any property is void if the settlor becomes bankrupt within two years from its date (Bankruptcy Act, 1914, s. 42), and it is also void if he becomes bankrupt within ten years from its date, unless it is proved that at the time of making it he was able to pay all his debts without the aid of the property comprised in it (*ib.*). A voluntary settlement is also void if it falls within the purview of the statute 13 Eliz. c. 5; as to which see FRAUDULENT CONVEYANCE.

As to the payment of estate duty on property passing under voluntary disposition, see VOLUNTARY.

II. A pauper is said to be settled in a parish (or union) when he has acquired a right to permanent relief there, as opposed to casual (q.v.) and irremovable paupers. (See POOR LAW; IRREMOVABILITY.) A settlement is either original or derivative. An original settlement is one acquired by the pauper without reference to other persons, and that (a) at common law, by birth in the parish, unless he has some other settlement, original or derivative; (b) under the Poor Relief (Settlement) Act, 1825, s. 2, the Poor Relief (Settlement) Act, 1831, s. 1, the Poor Law Amendment Act, 1834, s. 66, and the Poor Relief Act, 1662, by renting a tenement of the value of £10 a year at least for one whole year, and residing in the parish for forty days; (c) in the case of an apprentice (under the Poor Relief Act, 1691, s. 7, and the Apprentices (Settlement) Act, 1757, s. 1), by inhabiting in the parish for forty days; (d) under the Poor Relief Act, 1662, s. 1, by having an estate in the parish of any nature or value, and inhabiting within 10 miles thereof; (e) under the Poor Relief Act, 1691, s. 5, and the Poor Relief (Settlement) Act, 1825, s. 2, by paying parochial rates and taxes in respect of a tenement within the parish of the yearly value of £10 a year at least; (f) under the Divided Parishes and Poor Law Amendment Act, 1876, s. 34, by residing in the parish for three years. (See RESIDENCE.) A derivative settlement is one derived from some other person, and under the Divided Parishes and Poor Law Amendment Act, 1876, s. 34, is either (a) by parentage, the rule being that every child under the age of sixteen takes the settlement of its father or widowed mother (or, if illegitimate, of its mother) until it acquires the age of sixteen, and retains that settlement until it acquires another, unless its parent had a derivative settlement, in which case the child's settlement is ascertained without reference to the parent; or (b) by marriage, a female pauper always taking the settlement of her husband.

Settlement Estate Duty. This was a stamp duty imposed by the Finance Act, 1894, s. 5, on, with certain exceptions, property which was settled by the will of a deceased person, or which, if settled otherwise, passed on the death of the deceased to some other person not competent to dispose of it. It, along with estate duty (q.v.), was payable once only during the continuance of the settlement. Thus, if A by his will bequeathed personalty in trust successively for, say, his four sons, B, C, D and E, during the life of each of them one after the other, with remainder to some person unborn at the date of A's death, then in such a case estate duty and settlement estate duty would be payable on the death of A, but no further estate or settlement estate duty would be payable on the successive deaths of B, C, D and E, though the property successively passed on the death of each of those persons.

In reliance on this relief from estate duty during the continuance of the settlement, many dispositions of property similar to that suggested above were made; but the legislature saw fit to abolish that relief by the Finance Act, 1914, s. 14, and to enact that, in the case of any person dying after the 11th May, 1914, no settlement estate duty should be levied, and that, in the case of any person dying after the 15th August, 1914, there should be no relief, except in the cases of property passing on death between husband and wife, from estate duty in respect of settled property on which settlement estate duty had been paid; so that on each devolution of settled property (except as between husband and wife) estate duty is payable in full: but the section went on to provide that,

where death duty had been paid, credit for the amount thereof, with simple interest at 3 per cent. from the 15th August, 1914, should be allowed on the next occasion when estate duty became payable under the section.

Settlement Estate Duty was fixed by the Finance Act, 1894, s. 17, at 1 per cent. on the principal value of the property. The rate was increased by the Finance (1909-10) Act, 1910, s. 54, to 2 per cent.

"Settlor, As." See COVENANTS.

Sever—Severable—Severance. To sever is to divide, and severable is that which is divisible. Thus a joint tenancy is severed when one of two joint tenants conveys his interest to a stranger, because the other tenant and the stranger are then tenants in common. See JOINT TENANCY.

Again, when a claim is composed of several parts, and some of them may be put forward or enforced without the others, the latter are said to be severable, and the act of severing them is called severance; thus where A had brought an action in an inferior Court for causes which were partly within and partly without the jurisdiction of the Court, he was allowed to sever them by abandoning the latter part of his case, so as to keep the action in the inferior Court. And when two or more defendants to an action put in separate defences, instead of joining in one defence, they are said to sever. See ENTIRE; APPORTIONMENT OF CONTRACTS; SEVERAL; SEVERALTY.

Severance is also the act of removing fixtures, growing crops, or minerals from land. A tenant who is entitled to remove fixtures must sever them during his term, or he loses his right. As to the effect of severance on growing crops and minerals, see those titles.

Several is opposed to "joint." Thus tenants in common of land are said to be seised by several titles, so that (see *Co. Litt.* 191A), if they are disseised each has a separate right of action, while joint tenants are seised by a joint title, and therefore if they are disseised they ought to bring one action to recover the land; and a covenant by several persons may be several, the effect being as if each had covenanted by a separate instrument, or joint, the effect in the latter case being that any covenantor who is sued can require the others, or the survivors of the others, to be sued also. In deeds, covenants by more than one person for the doing of a certain thing are commonly expressed to be both joint and several, or other words to the like effect. See JOINT.

As to a several fishery, see FISHERY; as to several hereditaments and inheritances, see HEREDITAMENT; INHERITANCE; as to a several pasture, see PASTURE.

See SEVERALTY.

Severalty. Property is said to belong to persons in severalty when the share of each is ascertained (so that he can exclude the others from it) as opposed to joint ownership, ownership in common, and coparcenary, where the owners hold in undivided shares (see ESTATE). Usually when land is held in severalty, it is divided so that each of the owners has a part to himself, but they may agree that one shall have the land for one part of the year, another for another, and so on, and in this case also they are said to hold in severalty (see INHERITANCE). The term severalty is especially applied to the case of adjoining meadows undivided from each other, but belonging, either permanently or in what are called shifting severalties (*infra*), to separate owners, and held in severalty until the crops have been carried, when the whole is thrown open as pasture for the cattle of all the owners, and in some cases for the cattle of other persons as well: each owner is called a severalty owner, and his rights of pasture are called severalty rights, as opposed to the rights of persons not owners. See COMMON; COMMONABLE; DOLE; LAMMAS LANDS; OPEN FIELDS; SHACK.

When a number of persons are the owners of land, and an exclusive share is allotted to each for a certain time, at the expiration of which the shares are again distributed, so that the occupation varies or shifts from time to time, they are said to hold by shifting severalties. The most usual instance of shifting severalties occurs in the case of open fields and other commonable lands (see COMMONABLE; DOLE; LOT-MEAD; SHACK), where the severalty holding of each owner varies sometimes by rotation, sometimes by lot, while in some places the choice was formerly awarded to the best runner or wrestler, or determined by other fantastic methods, but since the general inclosure of the country such instances have become rare.

Sewer.—I. "Sewer" originally meant an open trench or channel, made for carrying off surplus water from land near the sea or a river, or from marshy ground. Commissioners of Sewers are officials appointed by the Crown, formerly by prerogative, but subsequently under various Acts of Parliament commencing with the statute 23 Hen. 8, popularly known as the Bill of Sewers, to survey, repair and keep in order sewers, streams, sluices and embankments within their district; they form

Courts of record and have power to make orders and assess rates. See COURTS OF SEWERS.

Bodies corporate or unincorporated, which are practically local Commissioners of Sewers, may be constituted by the Ministry of Agriculture and Fisheries under the Land Drainage Act, 1914, by means of provisional orders giving such bodies powers to construct land drainage works within their respective areas of action. The Act provides for their being invested with the necessary ancillary powers as to rating, acquisition of land, etc.

II. In its modern and more usual sense, a sewer means an underground or covered channel used for the drainage of two or more separate buildings, as opposed to a "drain," which is a channel used for carrying off the drainage of one building or set of buildings in one curtilage. (See DRAIN.) In London the main sewers were formerly vested in the Metropolitan Board of Works which has been superseded by the London County Council, and the local or branch sewers were formerly vested in the local authorities, namely, the vestries and district boards (q.v.), both of which have now been superseded by the metropolitan boroughs. Sewers in the country are, as a rule, vested in the local sanitary authority.

The Metropolitan Commissioners of Sewers were created by the statute 11 & 12 Vict. c 112; they were abolished by the statute 18 & 19 Vict. c. 120, and their functions transferred partly to the metropolitan vestries and district boards, and partly to the Metropolitan Board of Works (q.v.).

Sexagesima Sunday. The last Sunday but one before Lent. It intervenes between Septuagesima (q.v.) and Quinquagesima (q.v.) Sundays.

Sexton. The name of this functionary is a corruption of sacristan, the person who in pre-Reformation times had charge of the sacred vessels, the vestments and the like. In some of the cathedrals, the office of sacristan or sexton, in its ancient sense, is still held by a minor canon. Now, the sexton is sometimes merely a person who has charge of the church and its contents, and who rings the church bell, in which case the appointment generally lies with the churchwardens; but the incumbent generally appoints if, as is sometimes the case, the sexton is clerk as well as sexton, or if, as happens in some parishes, the sexton merely looks after the churchyard and digs graves. In many places, however, the sexton, without regard to the particular nature of his duties, is elected by the parishioners in select vestry or by the churchwardens and the parishioners. His tenure of office, like everything else connected with him, also depends upon local custom; in some cases he holds merely during pleasure, while in others it is a freehold for life except in case of proved misconduct. In 1739 it was decided that a woman could hold the office.

The above relates to ancient parishes. In modern parishes the sexton is appointed by the incumbent, who, with the consent of the bishop, may remove him for misconduct (New Parishes Act, 1856, s. 9).

Shack. It sometimes happens that a number of adjacent fields, though held in severalty, that is, by separate owners, and cultivated separately, are, after the crop on each parcel has been carried in, thrown open as pasture to the cattle of all the owners. "Arable lands cultivated on this plan," says Mr. Elton, "are called 'shack fields,' and the right of each owner of a part to feed cattle over the whole during the autumn and winter is known in law as common of shack, a right which is distinct in its nature from common because of vicinage, though sometimes said to be nearly identical with it." It is also known as "shackage" and "common of shacker," and the shack lands are sometimes called "the known lands," to distinguish them from an ordinary common, in which there is no distinction of property, and more frequently "half-year lands," from the period during which they are open to pasture.

Common of pasture in open meadows (q.v.) is of very much the same nature as common of shack.

Mr. Elton explains that "'shack,' in the dialect of Norfolk, signifies to ramble or go at large, and that the name has been adopted in speaking of half-year lands in other counties, probably because the leading case on the subject (7 *Co.* 5) was concerned with lands in Norfolk."

Shaftesbury's Act, Lord. A popular title of the Liberty of Religious Worship Act, 1855.

Share. In the law of companies, a share is a definite portion of the capital of a company. With very few exceptions, shares in companies are personal estate, whatever the nature of the company's property or business may be. The ownership of a share entitles the holder to receive a proportionate part of the profits of the company, and to take part in the management of its business, in accordance with the articles of association or other regulations of the company, which also regulate the mode in

which shares may be transferred. (See MEETING; RESOLUTION; SHAREHOLDER.) When the amount of a share has been paid to the company, it is said to be fully paid up. And if the company is a limited one, the liability of the holder of the share is then at an end. (See COMPANY.) Shares may be issued by a company as fully paid up (*e.g.*, in consideration of services or works rendered to the company by the person to whom they are issued), but in the case of a company formed under the Companies Acts, the agreement under which they are so taken must be made in writing and filed with the registrar within one month after the issue of the shares (Companies (Consolidation) Act, 1908, s. 88 (1)). A company formed under the Companies Acts (q.v.) may at any time convert its fully paid shares into stock (q.v.) (*ib.*, s. 41 (1) (*a*)). A share-certificate is an instrument under the seal of the company, certifying that the person therein named is entitled to a certain number of shares: it is *primâ facie* evidence of his title thereto (*ib.*, s. 23), but it is not a negotiable instrument. Compare SCRIP. A share-warrant to bearer is a warrant or certificate under the seal of the company, stating that the bearer of the warrant is entitled to a certain number or amount of fully paid-up shares or stock; coupons for payment of dividends may be annexed to it; delivery of the share-warrant operates as a transfer of the shares or stock (*ib.*, s. 37 (1) (2)). It is a negotiable instrument.

As to shares in ships, see SHIP.

Shareholder. In the strict sense of the term, a shareholder is a person who has agreed to become a member of a company, and with respect to whom all the required formalities have been gone through (*e.g.*, signing of deed of settlement, registration, or the like). A shareholder by estoppel is a person who has acted and been treated as a shareholder, and consequently has the same liabilities as if he were an ordinary shareholder. Thus, a person who has acted as a shareholder may be liable for the debts of the company, although he has never been registered as a shareholder, and is therefore not a shareholder in the full sense of the word. So also a person will be treated as a shareholder if he has entered into a valid contract to take shares.

She. See HE.

Sheading. The Isle of Man is divided into six divisions (somewhat in the nature of ridings) known as sheadings.

Sheep-heaves are small plots of pasture, often in the middle of the waste of a manor, of which the soil may or may not be in the lord, but the pasture is private property and leased or sold as such. They principally occur in the northern counties, and seem to be corporeal hereditaments, although they are sometimes classed with rights of common, but erroneously, the right being an exclusive right of pasture. See PASTURE.

Sheep-scab. This is one of the diseases of animals, with regard to which, orders may be made by the Ministry of Agriculture and Fisheries: see ANIMALS, DISEASES OF.

Sheepwalk. A right of sheepwalk is the same thing as a foldcourse (q.v.).

Sheffield Registry. See TRADE MARKS.

Shelley's Case. If land is given to A for his life, or for any estate of freehold, and by the same gift or conveyance the land is limited either mediately or immediately to his heirs in fee (or in tail), the result is that A takes an estate in fee (or in tail), and not merely the particular estate first limited to him. Thus, if land is given "to A for his life, and after his death to his heirs," or "to A for his life, and after his death to B for his life, and after his death to the heirs of A," in either of these cases A takes an estate in fee simple: in the first case an estate in fee simple in possession, and in the second case an estate for life in possession, followed by an estate in fee simple in remainder expectant on the death of B. A's heirs take nothing, unless he dies intestate and allows the land to go by descent. In technical language, the word "heirs" is here a word of limitation, and not a word of purchase. This rule is called the rule in *Shelley's Case* (1 *Rep.* 94), a case in which the subject was much discussed, although the rule itself is of much more ancient date.

Sheppard's Touchstone. See DODERIDGE.

Sheriff is the chief officer of the Crown in every county in England (except Cambridge and Huntingdon, which have only one sheriff between them) including (Local Government Act, 1888, ss. 46 (1), 113) what is left of the ancient county of Middlesex. He is appointed by the Crown every year. He must hold some land within the county. The duties of sheriffs are very various, including the charge of Parliamentary elections, the execution of process issuing from the High Court and the Criminal Courts, the summoning of jurors and the levying of forfeited recognizances. Most of his ordinary duties are performed by the undersheriff and deputy.

The law as to sheriffs is consolidated by the Sheriffs Act, 1887, which repealed all earlier Acts on the subject.

The sheriffs of the City of London are in a

class by themselves. They are two in number and are elected by the City Corporation (Sheriffs Act, 1887, s. 33). The Sheriffs Act, 1887, except as is provided in s. 33, applies to them (*ib.*). The ancient Sheriff's Courts of the City (see COMMON PLEADER) have fallen into disuse.

Formerly the sheriff had judicial duties to perform as judge of the Sheriff's County Court; but these are entirely obsolete. (See COUNTY COURT; OUTLAWRY.) He also held a Court of record called the Sheriff's Tourn twice every year, which had the same functions and jurisdiction as the Court Leet (q.v.): it also has fallen into desuetude.

See ANGLO-SAXON LAWS; BAILIFF; BAILIWICK; ELEGIT; INQUIRY, WRIT OF; PRICKING FOR SHERIFFS; SHIRE-REEVE; WESTMORELAND.

Sheriff-geld. The rent or payment which the King received from the sheriff at the time when the office of sheriff was a source of profit: see *Rot. Parl.*, 50 Edw. 3.

Sheriff-tooth. This seems to have been a rent paid at an early period by certain tenants who held by the tenure of providing entertainment for the sheriff when sitting in his county court.

Sherman; Shearman. One who used to shear woollen cloth, that is to say, remove the nap from it. See the statutes 19 Hen. 7, c. 17, and Eliz. c. 7.

Shew Cause. When an order, rule, decree or the like, has been made *nisi*, the person who appears before the Court and contends that it should not be allowed to take effect, is said to shew cause against it. See ABSOLUTE; DECREE; NISI; RULE.

Shewer; Shower. In the practice of the High Court, when a view by a jury is ordered, persons are named by the Court to shew the property to be viewed, and are hence called shewers. There is usually a shewer on behalf of each party. See VIEW.

Shifting Clause, in a settlement, is a clause by which some other mode of devolution is substituted for that primarily prescribed. Examples of shifting clauses are—the ordinary name and arms clause (q.v.)—and the clause of less frequent occurrence by which a settled estate is destined as the foundation of a second family, in the event of the elder branch becoming otherwise enriched. These shifting clauses take effect under the Statute of Uses. See USE.

Shifting Use. See USE.

Shilling. See SILVER COINS.

Shilwite. The same as childwite (q.v.).

Ship. Under the Merchant Shipping Act, 1894, s. 1, a vessel cannot be registered as a British ship unless she belongs wholly to British subjects, or to a corporation formed under and subject to the laws of, and having its principal place of business in, the British Empire. A British ship is personal property, but, so long as she is on the high seas, she is deemed to be part of the soil of England: thus, persons born on board a British ship, whether in foreign territorial waters or not (British Nationality and Status of Aliens Act, 1914, s. 1 (1) (c)), are natural-born British subjects, and the British Courts have jurisdiction in respect of crimes committed on the high seas on board British vessels.

The ownership of every registered ship is divided into sixty-four shares, all of which may belong to one person, or they may be divided among several persons; but not more than sixty-four persons can be registered as part-owners of any one ship. (See PART-OWNER.) Although not more than five persons may be registered as joint-owners of any ship or of any share or shares therein (Merchant Shipping Act, 1894, s. 5), a corporation may be registered as owners (*ib.*). Any part-owner can transfer or mortgage any or all of the shares held by him; but to do so he must comply with the statutory provisions on these heads (as to which, see BILL OF SALE; MORTGAGE), as ships are not within the ordinary rules governing the assignment and hyopthecation of chattels.

As to the hypothecation of ships, see BOTTOMRY; HYPOTHECATION; NECESSARIES; RESPONDENTIA.

As to the employment of ships, see AFFREIGHTMENT; BILL OF LADING; CHARTER-PARTY; DEMURRAGE; FREIGHT; INSURANCE; LAY DAYS; LOSS; MANAGING OWNER; MERCHANT SHIPPING; PILOTAGE; POLICY OF ASSURANCE; RUNNING DAYS; SEAMEN; SEAWORTHINESS; SHIP'S HUSBAND; TRANSIRE.

For other matters relating to ships, see ADMIRAL; ADMIRALTY; AVERAGE; COLLISION; COURT OF SURVEY; DERELICT; DETAINING OFFICER; LIMITATION OF LIABILITY; SALVAGE; WRECK.

Ship's Agent. Under the Naval Agency and Distribution Act, 1864, as applied by the Naval Prize Act, 1918, every ship of His Majesty's when in commission must have an agent—who may not be in His Majesty's service nor be a solicitor or proctor—to look after the claims of the officers and crew to special payments (such as those in salvage or in prize, or for the capture or destruction of enemy ships, etc.), to which they may become en-

titled. He receives as his remuneration 2½ per cent. on moneys recovered. He must have a place of business within five miles of the General Post Office, London. He is subject to the Court of Admiralty as if he were an officer thereof.

Ship's Husband is a person to whom the owner or part-owners of a ship delegate the management of her while she is in the home port. He is usually the general agent of the owners in regard to all affairs of the ship in the home port, such as repairs, equipment, hiring officers and crew, affreightment, etc., but not insurance; sometimes his authority is limited to specific things See AGENT; MANAGING OWNER.

Ship's Papers. A ship's registry certificate, her bill of lading, her bill of health, her charter-party, her log, and other documents which show the character of the ship and her cargo, are known by this name.

Shire. A county. The word is now used only colloquially, except in compound names such as Yorkshire.

Shire Clerk. It was in the capacity of shire clerk that the sheriff held the old county court. The office was never held except by the sheriff.

Shire-ground; Shire-land. Such parts of the kingdom as had been formed into shires: see the statute 27 Hen. 8, c. 26, s. 24.

Shiremote. See FOLCMOTE; COUNTY COURT.

Shire-reeve. An early form of the word sheriff. See REEVE.

Shooting.—I. The right of shooting over land is a variety of the right of sporting (q.v.).

II. In criminal law, shooting, or attempting to shoot, a person with intent to commit murder, or to maim, disfigure, or do grievous bodily harm to him, or to prevent the lawful apprehension or detainer of any person, is felony, punishable with penal servitude for life (maximum) (Offences against the Person Act, 1861, ss. 14, 18) Shooting at vessels or boats belonging to the Navy or in the service of the Revenue, or at any officer employed in the prevention of smuggling, is felony punishable with penal servitude for any term not less than five years, or imprisonment not exceeding three years (Customs Consolidation Act, 1876, s. 193).

Shop-lifting Act. The popular title of the statute 10 Will. 3, c. 12, which made it felony without benefit of clergy (that is to say, a capital offence) to steal goods to the value of 5s. from any shop, warehouse, coach-house or stable. The Act (except ss. 7, 8, dealing with the Clerk of Assise) was repealed by the statute 7 & 8 Geo. 4, c. 27, s. 1.

Shops. The carrying on of business in shops is now regulated by the Shops Acts, 1912 and 1913, which (Act of 1912, s. 22 (3)) repealed the Shops Acts, 1892 to 1911, but re-enacted them in a consolidated form. The term "'shop' includes any premises where any retail trade or business is carried on"; the term "'shop-assistant' means any person wholly or mainly employed in a shop in connection with the serving of customers or the receipt of orders for the despatch of goods" (Act of 1912, s. 19 (1)).

The main provisions of the Acts are: On one day in each week—with an exception as to the week preceding a bank holiday—a shop assistant cannot be kept employed after 1.30 p.m., and all assistants must be given intervals for meals (Act of 1912, s. 1; Sch. 1); no person under the age of eighteen can be employed in or about a shop, whether wholesale or retail, for more than seventy-four hours (including meal intervals) in any week (s. 2); every shop (except shops for the sale of intoxicants, refreshments, motor cycles, etc., newspapers, etc., perishable food, tobacco, medicines, etc.) must be closed at 1 p.m. on one day in each week, except when a bank holiday occurs (s. 4, Sch. II.); and orders may be made by the local authority (see s. 13 (2)) with the approval of the Home Secretary, for the closing at particular hours—not earlier than 7 p.m.—of shops other than those for the sale of intoxicants, refreshments, newspapers, tobacco and medicines, or those used for post office business (s. 5, Sch. III.).

The Act of 1913 exempts public-houses and other such establishments from the operation of s. 1 of the Act of 1912, and contains substituted provisions which give to shop assistants employed therein intervals of leisure at periods suitable to the business carried on.

Short Cause. In the Chancery Division, when the hearing of an action (whether on motion for judgment, further consideration, or otherwise) involves no question of difficulty, and is not likely to take up much time in argument, or is such that the subject-matter of it would authorise the Court to make an order as of course, or is one in which all parties consent to the order or judgment, it may, on a certificate by the plaintiff's counsel that it is fit to be heard as a short cause, be marked as "short" in the registrar's book, instead of being set down in the ordinary cause list. One day in each week is appointed for hearing short causes, and as each is disposed of in from five minutes to a quarter of an hour, an action

which has been marked "short" may be brought to a hearing with great despatch.

In the King's Bench Division, Ord. 14, r. 8, a special list is kept of cases in which, under that order, a defendant has been given leave to defend; and such cases are also known as short causes.

Short Entry. See ENTERING SHORT.

Shortford. Anciently, in the City of Exeter, this was a procedure by means of which the owner of a tenement, the rent of which was in arrear, could recover possession if no distress could be levied.

Shorthand-writers' Notes of the evidence or arguments on the trial or hearing of an action are frequently taken for future use on a motion for new trial or an appeal. As a general rule, the party taking them has to bear the expense himself. But in a special case (as where the evidence is exceptionally voluminous), the costs will be allowed by special direction of the Court. The costs of shorthand notes of the judgment of an inferior Court are allowed, as of course, by the Court of Appeal; which, moreover will ordinarily allow the costs of the summing up in the Court below, but will allow the costs of shorthand notes of the evidence below only in special cases.

The Criminal Appeal Act, 1907, s. 16, provides that shorthand notes are to be taken at the trial of any person having a right of appeal under that Act, and that transcripts of such notes are to be furnished to either party on payment of the prescribed charges. See also r. 5 of the Criminal Appeal Rules, 1908.

Short Notice of Trial. See NOTICE OF TRIAL.

Short Title. In 1845 the statute 8 & 9 Vict. c. 16, enacted (s. 4) as follows: "In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression 'The Companies Clauses Consolidation Act, 1845.'" This originated the modern practice of giving short titles to Acts of Parliament. The practice is now invariably followed; but for years after 1845 a short title might or might not be given to an Act. Thus the statute 56 & 57 Vict. c. 31, had no short title until the Short Titles Act, 1896, gave it the short title of the Rivers Pollution Prevention Act, 1893.

Now, under an order of the House of Lords, every Bill must contain a section giving it a short title.

The Short Titles Act, 1892, gave short titles to about 800 Acts. It was repealed and re-enacted by the Short Titles Act, 1896; and the latter Act gave short titles to about another 1,300 Acts. There are still, however, many Acts without short titles. Neither of the Short Titles Acts gave a short title to any Act which had been repealed at the date of their respective enactment; and in the event of its being necessary to refer to any such repealed Act in a statute or a legal instrument it must, unless it happens to have been passed since 1845, and to have had a short title, be referred to as, for instance, "An Act of the session of the 5th and 6th years of the reign of Her late Majesty Queen Victoria, chapter 52, intituled, 'An Act to Indemnify Witnesses who may give Evidence before the Lords Spiritual and Temporal on a Bill to exclude the Borough of Sudbury from sending Burgesses to serve in Parliament.'" See COLLECTIVE TITLE.

Show of Hands. Since 1872 (see HUSTING) the mode of election known as a show of hands (that is to say, by counting the hands of the electors which may be held up to indicate the candidate for whom each elector votes) has formed no part of the procedure at any election for which the use of the ballot (q.v.) is prescribed. For University elections the ballot is not prescribed, and the decision of the electors may be taken either by a show of hands, or by a poll; but the show of hands is never used. The show of hands is, however, the prescribed method of electing parish councillors—unless a poll be demanded by a certain number of the electors present at the parish meeting (Parish Councillors Election Order, 1901, rr. 12, 13).

Shrove Tuesday. The day before Ash Wednesday (q.v.); anciently called also Fasten Tuesday, that is to say, the Tuesday which was the eve of the fast.

Si actionem, etc. Before Latin (see FRENCH) ceased to be used in pleadings, these words were part of the conclusion of a plea in bar; and from 1733 until Hilary Term, 1834, the use of the same conclusion in English was obligatory. In English the conclusion was "prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him": see Stephen, *Pleading*, 5th ed., p. 435. Compare ACTIO NON.

Si autem sacramentum fuerit, licet falsum, tamen non committit perjurium (3 *Inst.* 167). (But if an oath be foolish, he who takes it, does not commit perjury, even though it be false.) This is a quotation from Bracton (*lib.* 4, *f.* 188): it shows that even from an early date the law did not concern itself with the question of the truth or falsity of any oath taken without legal sanction.

Sicut alias. See ALIAS WRIT.

Sic utere tuo ut alienum non lædas (9 *Rep.* 59). (Use your own property so as not to injure your neighbour's, or (less literally, but more accurately), so as not to interfere with the rights of your neighbour.) Any man can build a reservoir on his land; but he is bound to see that it does not burst and flood his neighbour's land. Compare ÆDIFICARE IN, ETC. See OWNERSHIP.

Side-bar Rules; Side-bar. Over a hundred years ago there was in Westminster Hall a bar or partition—known as the side-bar—from within which attorney each morning of term, moved the judges, on their way to the respective Courts, for common rules known as side-bar rules. Such motions were made *ex parte*, and were granted as of course. Before 1825 the practice of moving at the side-bar had been discontinued, and common rules were obtainable in the rule office; but each such rule was expressed to have been obtained upon a side-bar motion and continued to be known as a side-bar rule.

The common rules were such as the rule to plead, the rule to reply, the rule to rejoin, etc.

Sidesmen. In ancient parishes—as distinguished from parishes created under the New Parishes Acts—it is lawful, under Canon 90, to appoint annually, along with the churchwardens, "sidesmen," that is to say, two or three discreet persons who are required (Statutory Declarations Act, 1835, s. 9) to sign a declaration that they will faithfully assist the churchwardens. In many places no sidesmen are appointed. In others, the appointment is *quasi*-permanent, the same persons being re-elected each year; and this is more particularly the case where the sidesmen are paid salaries and are supplied with gowns.

Sierra Leone Company. See COMPANIES, CHARTERED.

Sign; Signature. In the primary sense of the word, a person signs a document when he writes or marks something on it in token of his intention to be bound by its contents. In the case of an ordinary person, signature is commonly performed by his subscribing his name to the document, and hence "signature" is frequently used as equivalent to "subscription"; but any mark is sufficient if it shows an intention to be bound by the document: illiterate people commonly sign by making a cross. (See MARKSMAN.) The provisions of the 17th section of the Statute of Frauds (which requires a contract for the sale of goods in certain cases to be signed by the party to be bound) have been held to be satisfied where the party writes the memorandum forming the contract on a piece of paper on which his name is printed.

The only signature which a corporation aggregate can make is by its seal. In practice ordinary contracts by a trading company are generally signed by an agent or officer of the company on its behalf. See SEAL.

Signet is a seal with which certain documents are sealed by the principal Secretary of State on behalf of the King. Formerly, every Bill for letters patent, after being signed with the Sign Manual (q.v.), was sealed with the Signet, as a warrant or authority to the proper officer to affix the Privy Seal or Great Seal (as the case might be) to the grant. But the necessity of affixing the Signet in such cases was abolished by the statute 14 & 15 Vict. c. 82, s. 2, and the use of the signet seems practically to have ceased. (See CLERKS OF THE PRIVY SEAL.) Coke says, however, that a writ of *ne exeat regno* may be issued under the Signet, "for this is but a signification of the king's commandment, and nothing passeth from him" (2 *Inst.* 556); and this would appear to be still the case.

In the Colonial Office the Signet is still affixed to commissions.

The Signet (or Privy Signet) is the principal of the three seals—the smallest of which is called the Cachet—by the delivery of which a Secretary of State is appointed to his office, and which he surrenders on ceasing to hold the office.

Significavit is used in two senses: (i) to denote the bishop's certificate on which a writ *de excommunicato* or *contumace capiendo* is, or was, issued (Ecclesiastical Courts Act, 1813, s. 1, Sch. A), and (ii) the writ itself. The former seems to be the original and proper use of the word. The certificate is directed to the King in Chancery (that is to say, to the Lord Chancellor), and specifies the offence for which it is desired to imprison the offender (*ib.* s. 1). See DE CONTUMACE CAPIENDO.

Signing Judgment. In the King's Bench Division, when judgment is given in an action after the trial, the successful party draws up two forms of judgment in accordance with the certificate of the associate (see CERTIFICATE), and takes them to the proper officer, who signs one form of judgment and files it; after stamping the other with the seal of the Court, he returns it to the party. Hence the process is called "signing judgment," though the proper term is "entering." (Ord. 41, r. 1; see

ENTER.) The process of signing judgment under an order, or on default, is similar.

Sign Manual is the signature or "royal hand" of the King. It is called the "sign manual" because it is the actual signature of the Crown, as distinguished from the operation of signing documents by the Signet (q.v.). Warrants for the use of the Great Seal or Wafer Great Seal are signed with the Sign Manual. See GREAT SEAL.

Silentium in senatu est vitium (12 *Co.* 94). Silence in the senate is a fault.) This *dictum* s not to be read as applying to the member f Parliament who suffers from constitutional nability to refrain from disorderly interruption. It was merely quoted by the judges in *Lady Shrewsbury's Case* in extenuation of their conduct in venturing to advise the Council with regard to points of law upon which many peers had already expressed opinions.

Silk Gown. See KING'S COUNSEL.

Silver Coins, Ancient. The period of the Roman occupation being left out of consideration, the earliest silver coin in general circulation was the silver penny coined by Offa in the eighth century. This, and the succeeding pennies coined up to the time of the Conquest, were of much the same weight as those coined from 1066 to 1377, which again were practically of the same weight as the threepenny piece coined in the reign of Victoria, which weighs a little more than twenty-one grains.

Down to 1272 the penny was the only silver coin. Between 1272 and 1307 Edward I. issued halfpennies and farthings, the weights of which were proportionate to their denominations. The penny continued to be issued down to some years after 1600; but its weight had gradually diminished. From twenty-two grains in 1272, it had dropped to eighteen grains in 1322; in 1412 it weighed only fifteen grains. Its weight after 1485 never exceeded twelve grains. From twelve grains it gradually sank to ten grains in 1527, to eight grains in 1552, and there was no further material reduction until the issue ceased soon after 1660. The farthing which, like the halfpenny, varied in weight with the penny, was not issued after 1543; and the halfpenny disappeared after the Protectorate. The penny, the halfpenny, and the farthing were the only silver coins down to 1327, soon after which year Edward III. issued the groat. On its first appearance, the groat was only slightly smaller than the florin of Victoria which weighs 174 grains. In 1380 the groat weighed seventy-two grains, from which it gradually sank to thirty-one grains in the reign of Charles II. The half-groat was contemporaneous with the groat down to this time. In 1831 the groat was re-issued with a weight of twenty-nine grains; but it was not again coined after 1856. This latest issue was popularly known as the fourpenny piece.

The shilling, weighing 144 grains (or just twelve times the weight of the contemporaneous silver penny), was first issued in 1504; and by the reign of Elizabeth it weighed only ninety-two grains, which does not much differ from the present weight of eighty-seven grains. In 1543, when at the intermediate weight of 120 grains, the shilling was also known as the testoon.

The crown, weighing 480 grains as against the ninety-six grains contained in the shilling of the period, the half-crown, the sixpence and the threepence, weighing 24 grains, first appeared in 1552. The crown and the half-crown, with slightly varying weights, have been issued during nearly every subsequent reign as well as during the Commonwealth and the Protectorate. The threepence continued to be issued occasionally down to 1685; but it was not coined from then until the reign of Victoria. The sixpence has been issued concurrently with every issue of the shilling.

The twopenny, the three-halfpence and the three-farthing pieces were silver coins issued only during the reign of Elizabeth. The twopenny was of practically the same weight as the half-groat.

Cromwell issued a two shilling piece or double shilling, weighing 163 grains, in 1658. It was the nearest early equivalent of the modern florin, which did not appear until the reign of Victoria.

The pound, the shilling and the mark, were in use as measures of money before the Norman Conquest; the first two are still used; and, in an order of the High Court, the mark was used to measure a penalty so late as 1770. Yet a writer of 1575 who said "*Poundes markes and shillings, which though they have no coynes, yet there is no name more in use than they,*" was quite correct, except as regards the shilling, the issue of which in 1504 (see *supra*) he perhaps had overlooked. There never was such a coin as the mark, and, except as regards a few pounds weighing 1,858 grains (exactly twenty times the weight of the contemporaneous shilling), which, along with half-pound pieces, were coined by Charles I. during the Civil War, there has never been such a coin as the pound. Originally a pound meant about 5,760 grains (the pound troy) of pure silver, a mark meant so much silver as

weighed a mark or two-thirds of a pound weight, and a shilling meant one-twentieth part of a pound weight of silver; while a shilling was the equivalent of twelve of the early silver pennies, each of which was therefore approximately one two-hundred and fortieth part of the pound. By the reign of Charles I. the pound, the shilling and the penny, as will be seen from the earlier part of this article, were, or represented, only about one-third of their original weight in silver; and the same applied to the mark, which all through was two-thirds of the pound for the time being. But from the earliest times, the pound, the mark and the shilling were used as measures of money in Acts of Parliament, charters, deeds, etc., in the reservation of rents of land and in the buying and selling of goods, the gold coinage (see GOLD COINS, ANCIENT) never being mentioned either then or nowadays in any such matter.

See also BLANK; SEIGNORAGE.

Similiter. That set form of words used by the plaintiff or defendant in an action by which he signified his acceptance of the issue tendered by his opponent, was so called. When simply added to the adversary's pleading, containing the tender of issue, it was in the following form: "And the plaintiff [*or* defendant, *as the case might be*] doth the like." When instead of being simply added to the pleading as above explained, it was delivered to the opposite party as a separate instrument, it then ran in the following form: "And the plaintiff, as to the plea of the defendant by him above pleaded, and whereof he hath put himself upon the country, doth the like;" in which latter case it was called a "special *similiter*." The use of the *similiter* was applicable only to issues of fact which were triable by the country (*i.e.*, a jury). The resort to a jury in ancient times could in general be had only by the mutual consent of each party; and it appears to have been with the object of expressing such consent, that the *similiter* was in those times added in drawing up the record; and from the record it afterwards found its way into the written pleadings. Accordingly, no *similiter* or other acceptance of issue was ever necessary, when recourse was had to any of the other modes of trial (Steph. Pl. 265, 266, 4th ed.). Under the Common Law Procedure Act, 1852, s. 79, the *similiter* ceased to be necessary.

Simoniacal; Simony. "Simony," says Stephen, "according to the canonists, is defined to be a deliberate act, or a premeditated will and desire of selling such things as are spiritual, or of anything annexed unto spirituals, by giving something of a temporal nature for the purchase thereof." Thus it is simony for anyone to purchase the next presentation to a living when it is vacant; and it is simony for a clergyman to purchase a next presentation even when the church is full; but, with these exceptions, the buying and selling of advowsons and next presentations is not illegal, provided that the next presentation is not dealt with separately from the advowson.

All simoniacal contracts, presentations, collations, etc., are void; and the persons guilty of the offence are subject to penalties.

See NEXT PRESENTATION; RESIGNATION BONDS.

Simple. See CONTRACT; HOMAGE; LARCENY; SALE.

Simplex beneficium. A minor dignity in a cathedral or collegiate church without a cure of souls. The holding of such a dignity along with a parochial cure of souls never amounted to a plurality.

Simplex justicianus, At an early period this meant a judge other than the chief judge of a Court. It corresponded to the later puisne (q.v.) judge.

Simplex obligatio non obligat (*D.* 4, 3, 37). (A simple commendation of goods, etc., by a vendor involves him in no liability.) See EA QUÆ COMMENDANDI, ETC.

Simplicitas est legibus amica (4 *Rep.* 5). (Simplicity is the friend of the laws): that is to say, a natural interpretation is to be preferred to a forced construction. Compare NIMIA, ETC.

Simul cum. (Together with.) Used formerly in indictments, as where the doing of an act was by "A *simul cum* divers others unknown," or in declarations (q.v.) where the writ was against two persons and the plaintiff declared against one of them *simul cum* the other.

Sine assensu capitali. An obsolete writ of entry which lay where a bishop or other dignitary had aliened church lands without the assent of the chapter or other body whose assent should have been obtained.

Sinecure. In former times the rector of an advowson had power, with the proper consent, to entitle (that is, appoint) a vicar to officiate under him; so that two persons were instituted to the same church. By degrees, the rectors who had entitled vicars got themselves excused from residence, and devolved the whole spiritual cure upon the vicars. In such a case the rectory became merely nominal, without

cure of souls (*sine curâ*), and was hence called a sinecure.

Provision for the suppression of sinecure rectories and for the endowment out of their revenues of the vicarages or the perpetual curacies previously dependent on them was made by the Ecclesiastical Commissioners Act, 1840, ss. 48, 54, 55.

Sine die. (Without day.) See ADJOURNMENT; EAT INDE SINE DIE.

Singular. Unless the contrary intention appears, the singular includes the plural in every Act of Parliament passed after the year 1850 (Interpretation Act, 1889, s. 1).

Si non omnes. Where a writ of *oyer and terminer* had been issued it was anciently customary to issue to the justices named therein a further writ, entitled *si non omnes*, which authorised any two of them to act in the absence of the others. See *F. N. B.* 111.

Sipessocna. This meant a hundred (of land): see Leg. Hen. 1, c. 6.

Si quidem in nomine, cognomine, prænomine, legatarii testator erraverit, cum de personâ constat, nihilominus valet legatum (*Inst.* 2, 20, 29). (Though a testator may have made a mistake as to the name or names of the legatee, when it is certain who is the person meant, the legacy is nevertheless valid.) Compare FALSA DEMONSTRATIONE, ETC.

Si quid universitati debetur singulis non debetur nec quod debet universitas singuli debent (*D.* 3, 4, 7, 1). (If anything is owed to an entire body it is not owed to the individual members, nor do the individual members owe what is owed by the entire body.) But partners are individually liable for every debt due by their firm. The maxim is, however, true of corporations aggregate.

Si quis. (If any one.) The *si quis* is a notice posted in the parish church of a candidate for Holy orders, stating that "if any one" knows of any just cause why the candidate should not be ordained, then the bishop is to be informed of such just cause.

Si quis unum percusserit, cum alium percutere vellet, in felonîâ tenetur (3 *Inst.* 51). (If a man kill one, meaning to kill another, he is held guilty of felony.) The law holds him guilty of murder or manslaughter, provided, of course, that the killing is unlawful.

Si recognoscant. A writ which anciently lay for a creditor against a debtor who had acknowledged in the old County Court that he owed such and such a sum for money lent.

Sittings. The sittings of the Supreme Court are four in number: the Hilary Sittings, commencing on the 11th January and ending on the Wednesday before Easter; the Easter Sittings, commencing on the Tuesday after Easter Week and ending on the Friday before Whit Sunday; the Trinity Sittings, commencing on the Tuesday after Whitsun Week and ending on 31st July, and the Michaelmas Sittings, commencing on 24th October and ending on 31st December (Ord. 63, r. 1). Formerly the sittings of the Courts of Chancery and Common Law were regulated by the terms (q.v.), and hence were distinguished as sittings in and sittings after term. Terms were abolished and sittings substituted for them by the Judicature Act, 1873, s. 26.

The sittings of the officers of the Supreme Court extend over the whole year (Ord. 63, r. 3), with the exception (*ib.*, r. 6), of Sundays, Christmas Day, Good Friday and six other specified days.

Six Acts, The. The popular title of the group of Acts 60 Geo. 3, and 1 Geo. 4, cc. 1, 2, 4, 6, 8, 9: portions of c. 1 (the Unlawful Drilling Act, 1819), c. 4 (the Pleading in Misdemeanour Act, 1819), and c. 8 (the Criminal Libel Act, 1819), are still unrepealed. The "Gagging Acts" was another popular title.

The six Acts in effect prohibited the training of persons to arms; authorised general searches and seizure of arms; prohibited meetings of more than fifty persons for the discussion of public grievances; repressed with heavy penalties and confiscation seditious and blasphemous libels; and checked pamphleteering by extending the newspaper stamp duty to political pamphlets.

Six Articles, Law of the. A popular title of the statute 31 Hen. 8, c. 14, entitled "An Act abolishing Diversity in Opinyons." Any person who expressed any opinion, either orally or in writing, contrary to the Real Presence was (s. 1) to be burned as a heretic; anyone who spoke or wrote against communion in one kind only for the laity, against the celibacy of the clergy, against the binding force of vows of chastity, or against private masses or against auricular confession was (s. 2) to suffer death as a felon without benefit of clergy. These were the Six Articles. Anyone bound by vows of celibacy who married, was also (s. 2) a felon without benefit of clergy. The Act was repealed by the statute 1 Edw. 6, c. 12, s. 2.

Six Clerks. Formerly there were in the Court of Chancery six officials, collectively known as the Six Clerks. Each of them was known as a Six Clerk. They seem to have descended from the six *clerici prænotarii* of the Chancery whom Fleta (*lib.* 2, cc. 13,

15) mentions. In the reign of Elizabeth they were, in theory, "the only attornies" of the Court; but in practice they were the intermediaries between solicitors and the Court. Later their duties corresponded to those subsequently performed by the Clerks of Records and Writs (q.v.). The statute 3 & 4 Will 4, c. 94, provided that until the number of six clerks had been reduced to two, no vacancies should be filled, and there were in fact only five Six Clerks when the Court of Chancery Act, 1842, s. 1, abolished them. The Act of 1842 transferred some of their duties to the Clerk of Enrolments in Chancery (q.v.), and others to the Clerks of Records and Writs (q.v.).

See *The "Six Clerks in Chancery,"* by T. W. Braithwaite, 8vo. London, 1879.

Sixpenny Writ Office. An office of the old Court of Chancery. The head of the office was known as the deputy. He received in 1798 a salary of £100 a year, in return for which he had "to attend every public day at the Cursitors, Six Clerks and Subpœna Offices, and to take an account of the writs sealed; to receive the duty on the same, also the duty on extra writs at the Crown Office; and to receive from the Purse Bearer the duty on all writs received at private seals; to pay the Sealer, the Deputy Sealer, the Chaff Wax, the Deputy Chaff Wax, the Gentlemen of the Chamber, and the Messenger of the Great Seal, their respective salaries out of the said duty each Term, and to pay the surplus, after deducting the receiver's salary, to the Clerk of the Hanaper." He collected duties to an average annual amount of about £600 (see *Reports from Committees of the House of Commons*, 15 vols., fol. Lond. 1803, p. 250). The office seems to have been abolished about 1852 at the time that the Sealer (q.v.) and the Chaff Wax (q.v.) and other such officials disappeared.

Sixty Clerks, The. From an early period, the Six Clerks employed assistants, who had, however, no legal status until in 1596 they were made officers of the Court, eight of them being assigned to each of the Six Clerks. This number of eight was increased a little later to first nine and then ten, so that in fact they became "the Sixty Clerks." They received a percentage of the fees payable to the Six Clerks. They were later known as the Sworn Clerks, under which designation they were abolished by the Court of Chancery Act, 1842, s. 1.

"Six-Wheelers." See TRAILERS.

Sky Signs. An advertisement consisting of letters, etc., so attached to a house, etc., that the letters, etc., stand out against the sky. A fuller definition is given in s. 125 of the London Building Act, 1894 (57 & 58 Vict. c. coxiii.); s. 127 of that Act prohibits the erection of any sky sign after the commencement of the Act; but ss. 128, 129 permit the maintenance of existing sky signs during a limited period which has long since expired. The Public Health Acts Amendment Act, 1907, s. 91, which applies outside the area governed by the Act of 1904, contains provisions to the same effect as ss. 125, 127, 128, 129 of the Act of 1904.

Slander. A false and malicious statement concerning a person made by word of mouth is a slander, giving rise to a right of action for damages: (i) if it imputes to the plaintiff the commission of a crime for which a corporal punishment may be inflicted, or the having some contagious disorder which may exclude him from society, or has reference to his trade, office, or profession, and is calculated to injure him therein or (Slander of Women Act, 1891) if it imputes unchastity or adultery to any plaintiff being a woman or girl; or (ii) if it has caused him special damage. The first kind is called slander *per se*, and the latter kind is called slander by reason of special damage. Thus, if one man falsely and maliciously says of another that he is [illegible] (v.) See E a swindler, or a leper, or that, being [illegible] e is a rogue, this is slander *per se*. In *Rep* nce of special damage, words imputing unchastity to a man are not actionable unless it is averred or unless the innuendo is that the misconduct in question was committed in the course of professional duties or under colour of an office. In the case of words imputing unchastity to a woman, the costs are as the costs in other actions, if there has been special damage, but if they are actionable only under the Act of 1891, then that Act provides that the plaintiff can recover no more costs than damages unless the judge certifies that there was reasonable cause for the action. Mere words of abuse are not actionable. In the class of slander on a person with reference to his occupation may also be included what is called slander of quality of goods, namely, a false and malicious statement throwing discredit on the commodity in which the party deals; as where a man said of a trader: "He hath nothing but rotten goods in his shop."

A statement in itself defamatory is not actionable if it is privileged: see PRIVILEGED.

See APOLOGY; DEFAMATION; JUSTIFICATION; LIBEL; MALICE.

Slander of title is a false and malicious statement, whether by word of mouth or in writing, with reference to a person's title to some right or property belonging to him, as where a person alleges that the plaintiff has a defective title to land, or to a patent. It seems that slander of title is not actionable unless special damage results from it.

A written slander of title is sometimes called a "libel in the nature of slander of title."

Slaughter-houses. Provisions for the registration, licensing and regulation of slaughter-houses or places for killing sheep and cattle, are contained in the sections (125-131) of the Towns Improvement Clauses Act, 1847, incorporated by the Public Health Act, 1875, s. 169, and, in places where Pt. III. of the Public Health Acts Amendment Act, 1890, has been adopted, by s. 29 of the last-named Act. In the Metropolis, slaughter-houses must be licensed by the county council (Public Health (London) Act, 1891, s. 20), and since 31st December, 1891, can be established anew only with the consent of that body (*ib.* 19).

Slave. In 1705 it was held by the King's Bench, where one Gould had taken a negro, alleged to be the slave of one Smith, that the action of trover did not lie, inasmuch as the negro was not the slave, that is to say, the chattel, of his alleged master, but that an action lay in trespass *quare captivum suum cepit*, inasmuch as the negro, if a captive, was therefore a villein; but it does not appear that any further action was taken. In 1772 it was held in *Sommersett's Case* that once a negro slave had set foot on English soil he was a free man.

Slave Trading is a felony, punishable with, as a maximum, penal servitude for fourteen years (Slave Trade Act, 1824, s. 10).

Piratical slave trading is the offence ("piracy, felony and robbery") of carrying away or assisting in carrying away any person from any part of His Majesty's dominions, for the purpose of his being dealt with as a slave (*ib.*, s. 9). It is punishable with, as a maximum, penal servitude for life.

The Slave Trade Act, 1873, is "an Act for consolidating the Acts for carrying into effect treaties for the more effectual suppression of the slave trade."

The Kidnapping Act, 1872, makes it an offence to decoy any native of any Pacific island (not subject to the jurisdiction of any civilised power) for the purpose of removing him elsewhere; but the offence is triable in the Courts of the Australian Colonies or (see the Pacific Islanders' Protection Act, 1875), in the Pacific Islands.

Slip. In negotiations for a policy of marine insurance, the agreement is in practice concluded between the parties by a memorandum called the slip, containing the terms of the proposed insurance, and initialed by the underwriters. Although, under the Marine Insurance Act, 1906, s. 22 (which requires every contract of marine insurance to be expressed in a policy) the slip is not itself enforceable, it is for many other purposes of legal effect; thus, where a slip has been initialed, the assured need not communicate to the insurer facts which afterwards come to his knowledge material to the risk insured against, and the non-disclosure of those facts will not vitiate the policy afterwards executed, although it would do so if there were no slip. The slip is in fact a binding contract for the issue of the policy.

Slip Order. A colloquial title for Ord. 28, r. 11, under which clerical mistakes and accidental slips in judgments or orders, and consequential errors, may be corrected in a summary way on motion or summons.

Slough-silver. A rent formerly paid to the owner of the castle of Wigmore in commutation of the service of rendering certain days work in harvest.

"S.L.R." The Statute Law Revision Act [1875, *or as the case may be*] which, since 1861 has been passed every few years to remove from the statute book Acts or parts of Acts, which have become wholly obsolete (see, *e.g.*, POUR PROCLAIMER, ETC.) or which have been impliedly repealed by subsequent legislation or—as has been the case since 1890 as regards many preambles to statutes—which Parliament thinks superfluous.

The *quasi*-repeal effected by the S.L.R. Acts differs from other repeals. It is in the main clerical only. The Acts have been passed chiefly in order to cut down the vast body of statute law to such dimensions as will permit of its publication in the comparatively small number of volumes known as the *Statutes Revised*; and the legal effect—if any—of anything "repealed" by the Acts remains notwithstanding such "repeal."

Small Dwellings. The Small Dwellings Acquisition Act, 1899, enables local authorities to make advances not exceeding £320 in any case to enable persons to acquire small houses for residential purposes.

Small Holding. This expression is defined by the Small Holdings and Allotments Act, 1908, s. 61, as meaning, for the purposes of

that Act, "an agricultural holding which exceeds one acre" [if it did not exceed one acre it would be an allotment (q.v.)], "and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value, for the purposes of income tax, not exceeding £50." Part I. (ss. 1-22) of the Act enables county councils, or councils of boroughs and urban districts, to purchase or hire land and to sell or let it for small holdings, and to make advances up to four-fifths of the purchase-money to tenants buying small holdings from landlords.

Small Holdings Commissioners. Two or more persons whom the Ministry of Agriculture and Fisheries may appoint (Small Holdings and Allotments Act, 1908, s. 2 (1)) for the purpose of aiding in the provision of small holdings and (s. 24 (4)), where the county council makes default, of allotments. These Commissioners are mere executive officers of the Minister.

Small Pox. See VACCINATION.

Smoke. The production of smoke in large quantities may be a ground for a civil action or for a prosecution for a nuisance at common law.

Under the Railway Clauses Consolidation Act, 1845, s. 114 (as amended by the Regulation of Railways Act, 1868, s. 19), railway companies are liable to a penalty for any locomotive not constructed so as to consume its own smoke, so far as is practicable. There are like enactments as regards steam locomotives on highways (Locomotive Act, 1861, s. 8), and as regards steam vessels on the Thames above the Nore (Public Health (London) Act, 1891, s. 23). But these enactments, like those regarding smoke from chimneys (q.v.), are not always enforced.

Smoke-farthing. See FUMAGE; PENTECOSTALS.

Smoking Carriages. All railways, other than the Metropolitan, must, unless exempted by the Board of Trade, provide on every passenger train smoking compartments for each class of passengers (Regulation of Railways Act, 1868, s. 20); and persons smoking in other carriages are liable to penalties under bye-laws made by the companies pursuant to the Railways Clauses Consolidation Act, 1845, ss. 108 and 109, and approved by the Board of Trade pursuant to the Railway Regulation Act, 1840, s. 7.

Smugglers Act. A former popular title of the statute 19 Geo. 2, c. 34. It was repealed by the S. L. R. Act, 1867.

Smuggling is the offence of importing or exporting prohibited goods, or of importing or exporting goods without paying the duties imposed on them. Goods so imported are liable to confiscation, and the offenders are liable to forfeit treble the value of the goods, or the penalty of £100. Persons assembling together for the purpose of smuggling are liable to imprisonment. The main enactment on the subject is the Customs Consolidation Act, 1876. See SHOOTING.

See DRUGS, DANGEROUS.

Socage is a kind of tenure, distinguished from the tenure of frankalmoign (q.v.) by its services being certain and of a temporal nature, and from the tenure of knight's service (q.v.), by its services having been originally agricultural. See SERVICE; TENURE.

Socage was orginally of two kinds, free socage and villein socage, according as the services were free or base. Thus, where a man held land by fealty and a fixed rent, the tenure was free socage. Free socage was of two kinds, socage *in capite* and common socage, but the former has been abolished. (See IN CAPITE.) Common free socage is the modern ordinary freehold tenure. (See FREEHOLD.) It has in theory the incidents of fealty, relief and wardship; but in practice they rarely occur. (See INCIDENT.) The tenures of petty serjeanty (q.v.), burgage (q.v.) and gavelkind (q.v.) are varieties of free socage. Villein socage is now represented by tenure in ancient demesne (q.v.). It differed from ordinary villenage in its services being certain. See VILLENAGE.

Bracton, Littleton, and other old writers, derive socage from the French *soc*, a ploughshare, because much land was anciently held by the service of ploughing the lord's land for so many days in the year. Some modern writers, on the other hand, incline to the derivation from the Anglo-Saxon *soc*, or rather *sôcn*, in the sense of "jurisdiction," because tenants in socage were the free suitors of the lord's Courts.

Socagium idem est quod servitium socæ; et soca idem est quod caruca (*Litt.* § 119). (Socage is the same thing as the service of the soc; and the soc is the same thing as the plough.) Littleton is probably wrong as regards the first of these statements: it is immaterial whether he is right or wrong as regards the second. See SOCAGE.

Societies, Unlawful. Unlawful societies are (1) those whose members are obliged to take any oath or enter into any engagement prohibited by the Unlawful Oaths Acts, 1797 and 1812; and (2) societies prescribing any oath,

etc., not authorised by law, or having members or officers not known to all the members, or having distinct branches or delegates who induce persons to join (Unlawful Societies Act, 1799, s. 2; Seditious Meetings Act, 1817, s. 25). There are exceptions, subject to conditions, in favour of Freemasons' lodges (Act of 1799, ss. 5-7; Act of 1817, s. 26), Quakers and religious and charitable societies not going outside their ostensible objects (Act of 1917, s. 27), and registered friendly societies which confine themselves to their own business (Friendly Societies Act, 1896, s. 32).

Socii mei socius meus socius non est (*D.* 50, 17, 47). (The partner of my partner is not my partner.) See PARTNER.

Socman. One who held in socage (q.v.).

Socome. A custom of grinding corn at the lord's mill. Where the grinding was obligatory the custom was known as bond socome, and where it was voluntary the custom was called love socome.

Sodomy. See ABOMINABLE CRIME.

Soke-land. See BOND-LAND.

Sokemanry. The tenure of land by a sokeman or socman (q.v.); and also the socmen collectively.

Solicitor is a person employed to conduct the prosecution or defence of an action or other legal proceeding on behalf of another, or to advise him on legal questions, or to frame documents intended to have a legal operation, or generally to assist him in matters affecting his legal position. To enable a person to practise as a solicitor, he must serve a term as an articled clerk (q.v.), pass certain examinations (see EXAMINATION), be admitted and enrolled as a solicitor of the Supreme Court of Judicature (see ROLLS; LAW SOCIETY), and take out a yearly certificate (granted by the Commissioners of Inland Revenue) authorising him to practise (Solicitors Act, 1843, ss. 21, 26). The usual period of service as an articled clerk is five years (*ib.* s. 3); but the judges may make rules reducing the period to four years in the cases of articled clerks having passed certain examinations (q.v.) at certain universities and educational institutions (Solicitors Act, 1922, s. 3); and the period is only three years in the cases of persons who have taken the degree of Bachelor of Arts or Bachelor of Science at any such university (*ib.* s. 4). As to the universities in question, see s. 9. As to the effect of bankruptcy, see that title.

Solicitors are not only bound to use reasonable diligence and skill in transacting the business of their clients, but they also occupy a fiduciary position towards their clients, so that a dealing (such as a purchase of property) between a solicitor and his client, is always liable to be impugned unless the client was able to protect himself, or had independent advice. (See FIDUCIARY; FRAUD; UNDUE INFLUENCE.) On the other hand, a solicitor is entitled to remuneration for his services, which he may recover not only by action (subject to the provisions of the Solicitors Acts; see TAXATION), but also by a lien on the property of his client to the extent of his costs, or by obtaining a declaration of charge on it. (See CHARGE; LIEN.) Solicitors are also considered as officers of the Courts in which they practise, and consequently the Courts have always exercised summary jurisdiction over them. If a solicitor is guilty of gross professional misconduct, the Law Society (q.v.) will order his name to be struck off the roll of practising solicitors; and if a solicitor institutes frivolous or vexatious proceedings in the name of a client, he may be ordered by the Court to pay the costs of them personally. Solicitors are subject to special provisions as to the delivery and taxation of their bills of costs against their clients, as to which, see TAXATION.

Solicitors have now very extensive rights of audience. The principal exceptions to their right are the House of Lords, the Supreme Court, and Quarter Sessions where barristers attend.

The professional services of a barrister can be obtained only through a solicitor except (1) in practice, where a judge requests a barrister to defend gratuitously a prisoner about to be tried on indictment or where a barrister undertakes a dock-defence (q.v.), or where the Court of Criminal Appeal, without assigning a solicitor, assigns counsel to an appellant under s. 10 of the Criminal Appeal Act, 1907; and (2), in theory, as regards non-contentious business.

A barrister is not forbidden by any express rule of professional etiquette from, for instance, accepting instructions, and a fee, direct from a client for the drafting of a marriage settlement; but the General Council of the Bar has expressed the view that such a course is undesirable. See ATTORNEY.

Solicitor-General is the second of the Law Officers (q.v.). His functions are political as well as legal, for he is almost invariably a member of the House of Commons, where he acts as the deputy or assistant of the Attorney-General (q.v.). The office is conferred by patent, and is held at the pleasure of the Crown. The Solicitor-General receives £6,000; he cannot since 1895 take private business.

Solinus terræ. A measure of land in Kent at the time of Domesday. The acreage is uncertain. Coke says that it meant rather less than two plough-lands and a half which (see PLOUGH; CARUCATE) still leaves the area uncertain. Jacob (1749), who probably had no accurate knowledge on the subject, says that it was about 160 acres.

Solitary Confinement. Many statutes (such as the Criminal Law Consolidation Act of 1861) of the middle of the last century empowered the Court, when sentencing a prisoner convicted on indictment, to order that during part of the sentence he should be kept in solitary confinement; but the isolation of prisoners is now provided for generally by s. 17 of the Prison Act, 1865; and particular sections which deal with the matter in other Acts have for the most part been repealed.

Solutione feodi militis parliamenti (or Bargensis parliamenti), De. A writ which anciently lay for a knight of the shire or for a burgess (borough member) whose constituents did not pay him the wages to which a member of Parliament was anciently entitled: see the statute 35 Hen. 8, c. 11.

Solutio pretii emptionis loco habetur (*Jenk. Cent.* 56). (The payment of the price stands in the place of the purchase.) This maxim is cited in connection with a decision that where A had bailed goods to B in such a way as to pass the property in them, then A, where he took the goods "*clam et noctanter*," was guilty of felony.

Solvendo esse. To be solvent.

Solvere pœnas. To undergo the punishment prescribed for an offence.

Solvit ad diem. While Latin was the language of pleadings (see FRENCH) this was the name of the plea by the defendant, in an action on a bond bill, etc., that he had "paid on the day" the money was due.

Solvitur in modum solventis (5 *Bing. N. C.* 461). See QUICQUID SOLVITUR, ETC.

Somerset. See HERALDS.

Son assault demesne (His own assault) was formerly the name given to that plea or defence by which a person against whom an action is brought for assault justifies himself by saying that the plaintiff or prosecutor assaulted him first, and that the assault complained of was committed in self-defence.

Sontage. This is said by Stow to have been a tax of forty shillings or every knight's fee.

Sound. An action which is brought to recover damages is said to "sound in damages," as opposed to an action for debt.

Soup. At certain Courts where prisoners are tried on indictment, it is the custom, in cases which are not privately prosecuted, to hand out the briefs to counsel who are members of the bar-mess connected with the Court and who regularly attend. In some cases only counsel who have been members of the mess for two or three years are eligible for such briefs, which are known as "soup," the reference being to the soup which used to be supplied, either gratuitously or at a low cost, to the poor or the unemployed at institutions known as soup-kitchens.

Southern Ireland. See NORTHERN IRELAND.

South Sea Company. A company incorporated in 1711 under a Royal Charter giving it a monopoly of trade to the South Seas pursuant to the statute 9 Ann. c. 15. The exclusive privilege of the company was abolished by the statute 55 Geo. 3, c. 57. The company, which was largely engaged in the whale fishery, continued to exist until 1850.

Sovereign. See GOLD COINS.

Spatæ placitum. (The plea of the sword.) A species of military Court mentioned in a document of the reign of Henry III. as having been held in Normandy by Henry II. and Richard I. Cowell (1749) states that it was a Court for the speedy punishment of military delinquents, but this may be merely a surmise. The *spata* (or more correctly *spatha*) was the short sword of the Roman legionary. This "plea of the sword" seems to have been distinct from the PLEAS OF THE SWORD (q.v.) anciently known as *placita gladii*.

Speaker. The Lord Chancellor (see CHANCELLOR) is *ex officio* the Speaker of the House of Lords, but he is never spoken of by that title. The Speaker of the Lords has no such position of authority as is held by the Speaker of the Commons. In the Lords the Speaker has, for instance, no control over a disorderly peer. "The Speaker" always means the Speaker of the House of Commons. That officer is the member of the House through whom it communicates with the Sovereign; but the substantial modern part of his duties it to preside over the proceedings of the House and enforce obedience to its orders (see also the Parliament Act, 1911). He is always a member of the House of Commons, and is elected, subject to the approval of the Crown, on the first day that a new Parliament assembles.

When the House is in Committee of the Whole House the Chairman of Ways and Means (whose salary is £2,500) or the Deputy Chairman of Ways and Means (whose salary is £1,000) presides. Both of them, like the

Speaker, are members, and like him are elected by the House; but in their case the Royal approval is not required. The Chairman, or in his unavoidable absence, the Deputy Chairman, can act as Deputy Speaker in the absence of the Speaker.

The Speaker receives £5,000 a year (House of Commons (Officers) Act, 1854, s. 1) and the use of a commodious house in the Palace of Westminster (q.v.). He neither takes part in debates nor votes—the Lord Chancellor does both the one thing and the other in the Lords, and down to 1835 the Speaker of the Commons used sometimes to take part in debates when the House was in committee—and his authority and his impartiality are practically unquestioned. In point of precedence outside the House he ranks next after the Prime Minister (q.v.). He is officially described as Mr. Speaker.

The Speaker's tenure of office is only during the continuance of the Parliament which elects him. For certain purposes connected with officers of the House he is, however, deemed to be Speaker between the dissolution of one Parliament and the meeting of the next (House of Commons (Officers) Act, 1846, s. 5), and in practice since 1835 the same Speaker is re-elected until, at the end of ten or fifteen years, he intimates his desire to retire. Then the House prays the Sovereign to grant him " some signal mark " of favour; the Sovereign replies that he is only too willing, but that he cannot act without the " concurrence " of the House; the House votes the retiring Speaker an annuity for his life of £4,000, and the Sovereign makes him a viscount. See, for instance, Mr. Speaker's Retirement Act, 1921.

Special. See AGENCY; AUTHORITY; BAIL; DAMAGE; DEFENCE; DEMURRER; EXAMINER; INDORSEMENT; JUDGMENT; JURY; LICENCE; OCCUPANCY; PAPER; PLEA; PLEADER; POWER; REFEREE; RESOLUTION; VERDICT.

Special Act. An Act directed towards a special object or a special class of objects. Thus, for instance, the various Clauses Acts (q.v.) frequently described as " special Acts " the particular Acts which might subsequently be passed regarding particular undertakings of the kind contemplated by the Clauses Acts.

Special Allowances. In taxing the costs of an action as between party and party, the master is, in certain cases, empowered to make special allowances, that is, to allow the party costs which the ordinary scale does not warrant. See Ord. 65, r. 27.

Special Case, in procedure, is a mode of obtaining a judicial decision on a statement of facts submitted to the Court by the parties without the aid of pleadings (q.v.). The parties to an action may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court (Ord. 34, r. 1). But independently of the agreement of the parties, if it appears from the pleadings or otherwise in an action that there is a question of law which it would be convenient to have decided before any other proceedings are taken, the Court may direct it to be raised by special case (*ib.* r. 2). See VERDICT.

A special case is set down for hearing, and argued in Court, after which judgment is given according to the rights of the parties. The Court has power to draw inferences of fact, that is, to deduce from facts stated the existence of facts not expressly stated.

See DEMURRER; QUESTIONS OF LAW. Compare ADVICE OF COURT.

Special Finding. See VERDICT.

Specialia generalibus derogant (*L. R.* 1 *C. P.* 546). (Special words derogate from general ones.) Compare GENERALIA SPECIALIBUS, ETC.

Special Limits. In the Metropolitan Streets Act, 1867, this expression (see s. 2) means such streets and portions of streets as may be declared to be " special limits " in manner provided by that Act. The making of special limits is authorised by s. 10 and s. 11, and enables the police to make special regulations as to traffic within such limits, while ss. 14-16 contain provisions which apply to any place which may be declared a special limit. The corresponding enactment for the City is the City of London (Street Traffic) Act, 1909 (9 Edw. 7, c. lxvii.).

Special Paper Days. In the Common Law Courts this formerly meant days on which cases in the Special Paper were argued. See PAPER DAYS.

Special Pleader. See DRAFTSMAN; PLEADER.

Special Reserve. This is now called the militia (q.v.).

Special Sessions are meetings of two or more justices of the peace held for the purpose of executing some jurisdiction (such as the licensing of ale-houses) which can be exercised by justices out of quarter sessions. They are held either upon dates fixed by the statute applicable to the matter, or, where quarter sessions are empowered to fix the dates, upon dates fixed by quarter sessions. Notice of the holding of special sessions must be given to all justices who act for the division in which such

sessions are to be held (County Rates Act, 1844, s. 7).

Special Tail. See ESTATE TAIL.

Special Traverse. A form of plea (or defence as we should now say) abolished by s. 65 of the Common Law Procedure Act, 1852. It consisted of two parts. The first part (known as the inducement) consisted of affirmative matter; the second part (known as the *absque hoc*) consisted of a denial, that is to say, a traverse in the proper sense of the word, and was introduced by the words "Without this, that." See *Stephen on Pleading* (5th ed.), pp. 193 *et seq.*; SANS CEO QUE.

Specialty. A contract under seal. Specialty debts are debts due on such a contract. See DEBTS; ASSETS

Specificatio, in Roman law, was a mode by which one person could acquire property belonging to another by making it into something different; as where a man made wine out of another's grapes: but the *specificator* was liable to make compensation to the original owner. *Specificatio* or specification is treated by Blackstone and others as a variety of accession (q.v.).

Specification. When a person applies for a patent (see PATENTS), he must (Patents and Designs Act, 1907, s. 1 (3)) leave with his petition a statement in writing describing the nature of his invention and called the specification. The specification may be either complete or provisional (*ib.*). If it be provisional the specification as a whole will consist of (1) the title (q.v.); (2) the provisional specification; (3) the complete specification; (4) the claims (q.v.); and (5) the drawings or, in the case of a chemical invention, the samples or specimens. Specifications require to be framed with great care, neither covering more than is the proper subject of the patent, nor omitting anything necessary to make the description intelligible. See DISCLAIMER; MEMORANDUM OF ALTERATION.

Specific Performance. The doctrine of specific performance is that where damages would be an inadequate compensation for the breach of an agreement, the contractor will be compelled to perform specifically what he has agreed to do. The principal instances of the jurisdiction occur in contracts for the sale, purchase or lease of land, or for the recovery of unique chattels, of which the Pusey Horn (see CORNAGE) is a well-known example. In such cases the Court (*e.g.*, the High Court, in an action instituted in the Chancery Division) will order the defendant to carry out the sale, purchase, or lease, or deliver up the chattel, and will imprison him until he does so. But the Court will not order specific performance of a personal contract, such as a contract to sing or paint a picture. See CONTRACT.

See CAIRNS' ACT.

Spes recuperandi. (The hope of recovery.) If it be entertained by a person in danger of death it makes a declaration by him inadmissible in evidence even though he in fact dies.

Spigurnel. The early name of an officer of the Chancery corresponding to the sealer (q.v.) of a later date. The office was one of dignity; thus it was for a long time held hereditarily by the great family of Bohun.

Spinning House. This was a prison at Cambridge used by the University authorities for the detention of light women convicted (under a royal charter of 26th April, 1561, as confirmed by the statute 13 Eliz. c. 29) of associating for immoral purposes with undergraduates. This jurisdiction was taken away in 1894 by the statute 57 & 58 Vict. c. lx, ss. 4-12. That enactment applied to Cambridge the Act 6 Geo. 4, c. 97, s. 3, which up to then had applied only to Oxford. The Act of George IV. provides that any woman guilty of conduct such as had been punishable with detention in the Spinning House, should be deemed an idle and disorderly person within the meaning of the Vagrancy Act, 1824. The effect is that any such person is now punishable only under the Vagrancy Act.

Spinster. The "addition," or description, in deeds of a woman who has never been married. She is described, *e.g.*, as "Jane Brown, Spinster."

Spiritual; Spiritualities. See CORPORATION; GUARDIAN OF THE SPIRITUALITIES; SERVICE; TEMPORALITIES.

Spiritualism. Used loosely as meaning alleged communication with the spirits of dead persons. The law seems to have committed itself to the position that no such communications in fact take place. A person professing to effect such communications has been held to be within the provisions against fortune-telling, etc., contained in s. 4 of the Vagrancy Act, 1824; if he obtains money for effecting them, he runs the risk of a prosecution for obtaining money by false pretences; and if he obtains a legacy from a testator who has acted on the alleged advice of the spirits, the will has no chance of standing.

Spoliation is a suit in a spiritual Court by which an incumbent of a benefice suggests that his adversary has wasted (*spoliavit*) the

fruits of the benefice, or received them to his prejudice. Such a suit lies by one incumbent against another to try which of them is the rightful incumbent where they both claim by one patron, and where the right of patronage does not come in question: *e.g.*, where a patron, erroneously believing his clerk to be dead, presents another; there the first incumbent may have a spoliation against the other. If, however, each of the incumbents claims by a different patron, so that the question of the ownership of the advowson is involved, the matter is for the civil Courts.

Spoliatus debet ante omnia restitui (2 *T. R.* 753). (The despoiled ought to get his property back before anything else.) This is the maxim governing the law as to the disposal of stolen goods. See MARKET OVERT; RESTITUTION; REVESTING.

Sponsions. In international law, these mean engagements entered into *ultra vires* by naval or military officers. They are invalid without ratification by the Governments concerned.

Sporting. As to the right of sporting, that is, of killing and taking game, on a man's own land, see GAME. The right of sporting on another man's land is a profit *à prendre*, and, therefore, an incorporeal hereditament; it can only be conveyed by deed of grant. It is generally an exclusive or several right, that is, excluding the owner of the land from its exercise; but it may be a right of common. See COMMON.

The Rating Act, 1874, s. 4, makes the right of sporting, when severed from the occupation of the land, a rateable hereditament. See RATE.

See CHASE; FOREST; PARK; WARREN

Spring-gun. See MAN-TRAP.

Springing Use. See USE.

Spur Rial. See GOLD COINS.

Squatter's Title. The term colloquially used in the law as meaning the title acquired by one who, having wrongfully entered upon land, has occupied it without paying rent or otherwise acknowledging any superior title for such time that he acquires an indefeasible title. See LIMITATIONS.

Squirrels are "vermin" for the purposes of s. 4 of the Forestry Act, 1919. See RABBITS.

S.S., Collar of. A collar or necklace of gold, weighing about four pounds, worn over his official robes by the Lord Chief Justice on State occasions. It consists of twenty-eight "S" shaped links, with what is known as a "garter-knot" between each two links, and with the Beaufort Badge of the portcullis and the rose—the badge of Henry VII—as a pendant. Formerly the Chief Justices of the Exchequer and the Common Pleas wore similar collars: that used by Sir Edward Coke descended to the successive Chief Justices of the Common Pleas until the Common Pleas ceased to exist. That used by Sir Alexander Cockburn has been in use by the Lord Chief Justices of England down to the present day. Sir Alexander (who died in 1880) left it to his successors as an "office-loom": but the law would not appear to recognise such an entity—the case of the Pusey Horn (see CORNAGE) is quite different—and there would appear to be nothing in law to prevent a Chief Justice, or his personal representative, from disposing of the collar. Lord Ellenborough, when he retired in 1818, retained for himself the collar which had been worn for a hundred and fifty years by the Chief Justices of the King's Bench.

Stabilia, De. A writ which in the time of Henry I. ran in Normandy. The law of England was never conversant with it.

Stabit præsumptio donec probetur in contrarium (4 *Rep.* 71*b*). (A presumption will stand good until the contrary is proved): provided, of course, it be a rebuttable presumption.

Stable-stand. One of the four matters upon proof of which there was *primâ facie* evidence of, as the case might be, killing, or attempting to kill, or to steal, deer in the royal forest. It consisted in being found with bent bow or cross-bow, or with hounds in a leash. The other three matters were Dog-Draw (actually hunting with hounds), Back-Bear (being in possession of a dead deer), and Bloody-Hand (being with bloody hands, etc.).

Staff-herding. Under the forest law this was a right not merely to turn cattle into a forest to graze, but also the right to send a herdsman with them. The first right could be held without the second.

Stage Carriage. See CAB.

Stage Play. For definition, see THEATRE. No stage play can be performed in any part of Great Britain until it has been licensed by the Lord Chamberlain (Theatres Act, 1843, ss. 12, 15).

Stage-right. Attempts have been made to introduce this word as a substitute for "the right of representation and performance" (q.v.), but it can hardly be said to be an accepted term of English law.

Stakeholder primarily means a person with whom money is deposited pending the decision of a bet or wager (q.v.); but it is more often

used to mean a person who holds money or property which is claimed by rival claimants, but in which he himself claims no interest. See INTERPLEADER.

Stallage is a payment due to the owner of a market in respect of the exclusive occupation of a portion of the soil within the market. See MARKETS AND FAIRS.

Stallions. See HORSE BREEDING.

Stamps. Stamps are used for two purposes; first, as a convenient mode of collecting fees payable in Courts of justice (*e.g.*, on filing documents, issuing writs and summonses, etc.); and secondly, as a mode of raising taxes on written instruments, such as receipts, conveyances, leases, etc., by virtue of various enactments generally known as the Stamp Acts. (See COMMISSIONERS OF INLAND REVENUE.) Stamps of the latter kind are either fixed in amount, or *ad valorem*, that is, proportionate to the value of the property dealt with by the instrument. Thus, the stamp on every receipt, cheque, and power of attorney, is fixed; while the stamps on bills of exchange, conveyances, leases, etc., vary with the amount of money or value of property which they deal with. Formerly deeds were liable to a progressive stamp of a fixed sum for every skin of parchment beyond the first, but this duty no longer exists.

Adhesive stamps are sold separately, and are affixed and cancelled by the person whose duty it is to have the instrument stamped. Others are impressed with a die on the parchment or paper on which the instrument is written. Adhesive stamps can be used only where their use is expressly provided for (Stamp Act, 1891, s. 2). Provision is made by the Stamp Duties Management Act, 1891, ss. 9, 10, for the allowance (or repayment of the amount) of a stamp which has been "spoiled," that is, where, by some accident or mistake, the stamp itself has been rendered unfit for use, or the instrument on which it has been affixed or impressed has become useless before it came into operation; and in certain other cases. Appropriated stamps are stamps which can only be used for instruments of a particular description, *e.g.*, bills of lading: see the Stamp Act, 1891, s. 10. An adjudication stamp is used to signify that the instrument has been submitted to the Commissioners of Inland Revenue, and that they are of opinion (if it is unstamped) that it is not chargeable with duty, or (if it is stamped) that it is duly stamped; and no question as to the proper stamp can then arise (*ib.*, s. 12). Where the stamp duty on an instrument depends upon the stamp on another instrument, the fact that the latter stamp duty has been paid may be evidenced by a stamp impressed for that purpose on the first instrument: this is called a denoting stamp (*ib.*, s. 11). No instrument executed in the United Kingdom, or relating to any property situate, or to anything done or to be done, in the United Kingdom, can be given in evidence or made use of, except in criminal proceedings, unless duly stamped (*ib.*, s. 14 (4)). In the case of the following documents—bills of exchange and promissory notes other than those at sight (s. 38 (1)), bills of lading (s. 40) and proxies (s. 80)—they cannot be stamped after execution; and charterparties (s. 51), attested copies (s. 63), receipts (s. 102), can only be stamped after execution within a limited time, or on payment of a special penalty. Marine policies cannot be stamped after execution except in the cases of mutual policies and of policies executed abroad (s. 95 (1)). Bonds, etc., conveyances, leases, mortgages, etc., and settlements must be stamped within thirty days of execution (s. 15 (2)). In the case of all other documents, the stamp may be affixed at any time after execution on payment of the unpaid duty, a penalty of £10, and interest on the duty at 5 per cent. per annum, so that the interest does not exceed the amount of the duty (s. 15 (1)). But any instrument executed out of the United Kingdom may be stamped within thirty days from its arrival in this country, without payment of any penalty (s. 15 (3) (a)). The Commissioners are also empowered to stamp any instrument, without payment of a penalty (s. 15 (3) (b)); and under this provision, the practice of the Commissioners is to stamp simple agreements, etc., within a fortnight, and deeds and instruments bearing an *ad valorem* duty within two months, after execution, without penalty, as a matter of course.

Where a document unstamped or insufficiently stamped is produced in a judicial proceeding, it may be received in evidence on payment to the officer of the Court of the unpaid duty, the penalty, and a further sum of £1 (s. 14 (1)).

Standard Charges; Standard Revenue. The Railways Act, 1921, s. 58, provides that the charges which each of the four amalgamated companies (formed pursuant to that Act) make to customers are, in the first instance, to be such as will yield to each such company a net revenue equal to the total net revenue in the year 1913 of the constituent and subsidiary companies of each amalgamated com-

pany. For the purposes of that Act, those charges are known as the standard charges (*ib.* s. 32), and that revenue is known as the standard revenue (*ib.* s. 58).

"Stand by." See CHALLENGE.

Standing Orders are rules and forms regulating the procedure of the two Houses of Parliament, each having its own. They are of equal force in every Parliament, except so far as they are altered or suspended from time to time.

Stannaries. The stannaries are a district which includes all parts of Devon and Cornwall where any tin works are situate and in actual operation. The tin-miners of the stannaries have certain peculiar customs and privileges, some of which are referred to under the head of TINBOUNDING. Civil actions in respect of matters arising as to mines within the stannaries might formerly be brought in the Stannary Court, which was a Court of record held before a judge called the Vice-Warden of the Stannaries: it also had power to wind up cost-book mining companies. Formerly an appeal lay to the Lord Warden of the Stannaries, and from him to the Privy Council, but this jurisdiction was transferred to the Court of Appeal by s. 18 of the Judicature Act, 1873. As from 1st January, 1897, the Stannary Court was abolished by the Stannaries Court (Abolition) Act, 1896; and the jurisdiction of the Court was transferred to the County Courts of Cornwall by an order of the Lord Chancellor made pursuant to that Act.

The Stannaries Acts, 1869 and 1887, contain provisions relating to the regulation of mining partnerships working mines in the stannaries.

Staple. The seaports from which wool, leather, tin and lead (collectively termed the staple) were exported, were from an early period called the staple, or *estaple*, towns; and the merchants of those towns had, from the reign of Edward I., a monopoly in the staple and were called the Merchants of the Staple, or, more shortly, the Staplers. The King decided what should from time to time be the staple towns. The chief staple from 1390 to 1558 was at Calais. In each staple town there was a mayor of the staple (appointed at first by the King, but subsequently for the most part by the mayor of the town), and two constables of the staple. These mayors of the staple held Staple Courts (long since obsolete), for the decision of matters touching the staple. Jacobs (1749) speaks of these Staple Courts as still being held; but it does not appear that they transacted any business in his time.

The Statute of the Staple (see CORRECTOR) regulated the staple towns. It was quite distinct from the Statute Staple (q.v.).

The Merchants of the Staple were incorporated as a merchant guild by a charter of Edward III.; Elizabeth renewed their charter; and Charles II. finally incorporated them as "The Mayor, Constables and Company of the Staple of England." The company still exists; but its monopoly (q.v.) had been destroyed even before the grant of the final charter: it has long since ceased to exercise any functions; and it has, within recent years, been judicially described as merely a dining club. In 1888 there were about thirty members.

Staple Inn. See INNS OF CHANCERY.

Star. An abbreviated form of the mediaeval Latin *starrum*, a derivative of the Hebrew word *shetar*, which meant a deed or contract.

Anciently, the deeds, obligations, etc., executed by the Jews before their expulsion from this country, were known as *starra* or *stars*; they were written in Hebrew or in Hebrew and Latin. One is preserved in the Record Office; it dates from the reign of John, and is written in Hebrew with a Latin translation appended.

Star-Bowkett Society. See BUILDING SOCIETY.

Star Chamber. The Court called by this name is commonly regarded as being the *Aula Regis* (q.v.), sitting in the Star Chamber, a room at Westminster The jurisdiction of the Court would, therefore, be all or some part of that residuary jurisdiction which remained after the severance of the Courts of Exchequer, Common Pleas, Queen's Bench, and Chancery.

By the statute 3 Hen. 7, c. 1, the Court was remodelled, and its jurisdiction placed upon a lawful and permanent basis. That Act empowered the Chancellor, Treasurer, and Keeper of the Privy Seal, or any two of them, with one spiritual and one temporal peer, and the Chief Justices of the Courts of Queen's Bench and Common Pleas, or in their absence, two other justices, to call before them and to punish the following offences:—(1) Combinations of the nobility and gentry, supported by liveries (that is to say, by retinues of followers wearing distinctive liveries); (2) Partiality on the part of sheriffs in making up the panels of jurors, or in making untrue returns of members; (3) Bribery in jurors; and (4) Riots and unlawful assemblies.

By the statute 21 Hen. 8, c. 20, the President of the King's Council was added to the list of judges; and by the statute 31 Hen. 8, c. 8 (which gave to the King's proclamations in ecclesiastical matters the force of law), all

persons offending against such proclamations were to be tried before the Star Chamber, and punished with fine and imprisonment.

The jurisdiction of the Court is defined by Lord Bacon as extending to "forces, frauds, crimes various of stellionate, and the incohations or middle acts towards crimes capital or heinous not actually committed or perpetrated."

The Star Chamber was of utility during the reigns of Henry VII. and subsequent monarchs: (1) In its repression of the turbulence of the nobility and gentry in the provinces; and (2) In its supplying a Court of jurisdiction for matters which, as being of novel origin, were unprovided for by the existing tribunals, *e.g.*, in the case of offences against proclamations in ecclesiastical matters.

The effect of the Court was to enhance the royal authority, which it did by supplying the executive with a speedy and effective machinery. Cardinal Wolsey has the credit of having improved and extended the jurisdiction of the tribunal.

But the very nature of the jurisdiction of the Court of Star Chamber rendered its process liable to great abuses; and Wolsey's connection with it was one of the principal causes of his unpopularity. The Court was abolished in 1640 by the statute 16 Car. 1, c. 10.

Star of India, Order of. The Most Exalted Order of the Star of India was founded in 1861. It consists of Knights Grand Commanders (G.C.S.I.); Knights Commanders (K.C.S.I.); and Companions (C.S.I.). It is used to reward services in connection with India.

State.—I. A State is a collection of persons occupying a certain territory, and having a legislative and executive organisation free from the control of any other human power. The name "State" is sometimes given to bodies which are really only parts of a State, such as the separate organisations which collectively make up the United States of America, or to Governments, such as those of Monaco, San Marino and Andorra, which are under the protection or control of other States; hence a "State," in the ordinary and proper sense of the word, is described as an independent or sovereign State.

Every State consists of two parts, the sovereign part (which in England is the Crown and Houses of Parliament) and the subject part. In its external relations or dealings with other States the sovereign part, or a branch of it (in England the Crown), represents the State. The relations between independent States are governed by what is called international law (q.v.). In its internal relations, that part of the sovereign Government of a State which is entrusted with the executive power enforces the law dealing with the relations between it and the subject members of the State. It is, therefore, considered as representing the whole State, and hence the term "State" is frequently used in the sense of "executive power in a State," as when we say that public law deals (among other things) with the relations between the State and the private members of the community. (See LAW.) As the State has the power of enforcing the law, it cannot be subject to legal duties, for otherwise it would have to enforce the law against itself. See ACT OF STATE; PETITION OF RIGHT.

It has been already mentioned that the relations between independent States are governed by international law, the nature of which is explained under that title. As one State cannot enforce a claim against another by legal procedure, it follows that no member of any State can enforce a claim against another State by legal proceedings in any Court of justice external to the latter State. Therefore, if a foreign State borrows money from an English subject, or commits what in the case of a private individual would be a tort against an English subject, no proceedings can be taken in the English Courts to enforce the claim thus arising, even although the foreign State may have property within the jurisdiction of the English Courts. This rule is subject to two apparent exceptions: (1) that if proceedings are taken by A against B in the English Courts in respect of property in which a foreign State claims or is believed to have an interest, it may be made a party to those proceedings as defendant to enable it to come forward and sustain its claim; here, however, it is obvious that the foreign State, though in form a defendant, is really a plaintiff: (2) that if a foreign State takes proceedings in an English Court against a private individual, the defendant can institute a cross-action or set up a set-off or counterclaim against the plaintiff as if the foreign State were a private person.

II. "State" in the old books sometimes stands for "estate." Conversely, Cecil, in the reign of Elizabeth, was termed Secretary of Estate instead of Secretary of State.

Statement. See ANSWER; BILL OF COMPLAINT.

Statement of Affairs. In bankruptcy practice under the Bankruptcy Act, 1869, a bankrupt or debtor who had presented a petition for liquidation or composition was required by

s. 19 of the Act to produce at the first meeting of creditors a statement of his affairs, giving a list of his creditors, secured and unsecured, with the value of the securities, a list of bills discounted, and a statement of his property. This enactment was replaced by s. 16 of the Bankruptcy Act, 1883. Now, under the Bankruptcy Act, 1914, every debtor against whom a receiving order is made must furnish a like statement, verified by affidavit, to the Official Receiver (Act of 1914, s. 14; see Form 33 in Appendix of Forms to Bankruptcy Rules, 1915).

Making a material omission in a statement of affairs is a misdemeanour, punishable with imprisonment for two years (Debtors Act, 1869, s. 11).

Statement of Claim. This is to be distinguished from the statement of the nature of the claim which is required in every writ of summons by Ord. 2, r. 1. It is a written or printed statement by the plaintiff in an action in the High Court, showing the facts on which he relies to support his claim against the defendant, and the relief which he claims. It is delivered to the defendant or his solicitor.

If the writ is specially indorsed under Ord. 3, r. 6, the indorsement is deemed to be the statement of claim, and no further statement of claim can be delivered. Where the writ is not specially indorsed, and an order is made for the delivery of pleadings (see DIRECTIONS, SUMMONS FOR), then the statement of claim must be delivered within the time limited by such order, or within twenty-one days if no time be limited; and apart from such order no statement of claim may be delivered except where the defendant fails to appear (Ord. 20, r. 1).

If the defendant does not enter an appearance when the writ is not specially indorsed, and the action is one in which the plaintiff cannot sign judgment for default of appearance (as where it is an action for an account, redemption or the like), the plaintiff must file the statement of claim with the proper officer of the Court and set down the action on motion for judgment (Ord. 13, r. 12). See RELIEF; WRIT OF SUMMONS.

In a commercial cause (q.v.) a notification termed "point of claim" corresponds to the statement of claim.

Statement of Defence. In the practice of the High Court, the defendant delivers in reply to the statement of claim a pleading called a statement of defence. The statement of defence deals with the allegations contained in the statement of claim (or the indorsement on the writ if it be specially indorsed and leave to defend be given under Ord. 14), admitting or denying them, and, if necessary, stating fresh facts in explanation or avoidance of those alleged by the plaintiff. If the defendant wishes to set up a counter-claim (q.v.), he adds it to his defence, and the pleading is then called a statement of defence and counter-claim. See PLEADING.

In a commercial cause (q.v.) the notification termed "points of defence" corresponds to the statement of defence.

Statement of Particulars. When the plaintiff in an action claimed a debt or liquidated demand, but had not indorsed the writ specially (*i.e.*, indorsed on it the particulars of his claim under Ord. 3, r. 6), and the defendant failed to appear, the plaintiff might, under the R.S.C., Ord. 13, r. 6, as it stood in 1880, file a statement of the particulars of his claim, and after eight days enter judgment for the amount, as if the writ had been specially indorsed. (See WRIT OF SUMMONS.) Now in a like case the plaintiff can, under the present Ord. 13, r. 3, enter final judgment.

State of Facts and Proposal. In lunacy practice, when a person has been found a lunatic, the next step was formerly to submit to the Master a scheme, called a "State of Facts and Proposal," showing what was the position in life, property and income of the lunatic, who were his next-of-kin and heir-at law, who were proposed as his committees, and what annual sum was proposed to be allowed for his maintenance, etc. From the state of facts and the evidence adduced in support of it, the Master framed his report. As to the present practice, see LUNACY.

Stationers' Hall. The Hall of the Stationers' Company, in the City of London. Under the Copyright Act, 1842, s. 24, registration at Stationers' Hall was necessary, not to secure copyright, but as a condition precedent to the right to sue for an infringement. The Copyright Act, 1911, repealed all enactments referring to Stationers' Hall: it contains no reference to Stationers' Hall; and no registration there is now required for any purpose.

See COPYRIGHT.

Stationery Office. A Government office, established in 1786, which supplies the stationery and the books and other publications required by Parliament and the various public departments. It also has control of the printing required by Parliament and the departments. By letters patent dated 3rd October, 1888, the Controller [that is to say, the chief officer] of the Stationery Office, is

printer of all Acts of Parliament. The Office has no statutory origin: it is dependent for its existence on the annual vote of Parliament.

Status. The status of a person is his legal position or condition; thus, when we say that the status of a woman after a decree *nisi* for the dissolution of her marriage with her husband has been made, but before it has been made absolute, is that of a married woman, we mean that she has the same legal rights, liabilities, and disabilities as an ordinary married woman. The term is chiefly applied to persons under disability (q.v.), or persons who have some peculiar condition which prevents the general law from applying to them in the same way as it does to ordinary persons.

The question of status is of importance in jurisprudence, because it is generally treated as a basis for the classification of law, according as it applies to ordinary persons (general law, normal law, law of things), or to persons having a status, that is, a disability or peculiar legal condition, such an infants, married women, lunatics, convicts, bankrupts, aliens, public officers, etc. (particular law, abnormal law, law of persons).

"Status" is sometimes applied by analogy to things, as where we speak of a house having acquired the status of an ancient building.

See ANCIENT MESSUAGE.

Status de manerio. (The "state of a manor.") This meant the assembly of the tenants in the Court of the lord to do suit and claim their rights and privileges.

Status quo. (The state in which [things are, or were].) The expression is also found in the combinations *in statu quo* (in the state in which) and *in statu quo ante bellum* (in the state in which [it was] before the war); all the three expressions are common in the language of diplomacy.

Statuta armorum. (The Statutes of Arms.) An enactment regulating the number of esquires whom a knight might take with him to a tournament. It is printed in the *Statutes of the Realm* (Vol. 1, p. 230), *s.v. Statutes of Uncertain Date*; in the *Statutes at Large* (Vol. 9, App. p. 26), it is printed as of uncertain date under the title of *Statutum Armorum ad Torniamenta*

Statuta de moneta. (Statutes Concerning Money.) An enactment, consisting of several "statutes" (corresponding to what are now called sections), printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 219), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as 20 Edw. 1, sts. 4, 6.

Statutable or **Statutory** is that which is introduced or governed by statute law, as opposed to the common law or equity. Thus, a Court is said to have statutory jurisdiction when jurisdiction is given to it in certain matters by Act of Parliament. (See PETITION.) For other examples, see CONVEYANCE; DECLARATION; MORTGAGE.

Statute.—I. A statute is technically the same thing as an Act of Parliament (q.v.), though in practice the term is usually confined to public Acts. In this sense statutes are of the following kinds:

A statute is said to be "declaratory," when it does not profess to make any alteration in the existing law, but merely to declare or explain what it is; "remedial," when it alters the common law; "amending," when it alters the statute law; "consolidating," when it consolidates or throws together, into one statute, several previous statutes relating to the same subject-matter, with or without alterations of substance; "disabling" or "restraining," when it restrains the alienation of property, and "enabling," when it removes a restriction or disability; "penal," when it imposes a penalty or forfeiture, as in the case of the statutes relating to game, smuggling, the profanation of the Lord's day, etc. See INFORMER; PENALTY; SUNDAY.

Sessional publication of the statutes began in 1484 with 1 Richard 3, printed by Maclinia. About the same time Maclinia printed a volume entitled *Nova Statuta*, containing the statutes from Edw. 3 to 22 Edw. 4. This was followed about 1540 by *The Great Book of the Statutes*, in which they were brought down to date. In 1543 there was issued a volume containing all the statutes from Magna Charta to the end of Henry VII. In 1587 *The Whole Volume of Statutes at Large* from Magna Charta to 29 Eliz. was printed, and this was several times reprinted with additions to the date of publication. Later editions of the *Statutes at Large* were compiled by Keble, 1676 (several times reprinted and brought down to date); by Hawkins (to 7 Geo. 2); by Cay (to 30 Geo. 2); by Pickering to 1761 in 23 volumes 8vo; and to the Union (41 Geo. 3) by Ruffhead in 18 volumes, by Runnington in 14 volumes, and by Tomlins and Raithby in 10 volumes quarto and 20 volumes 8vo. The *Statutes at Large* means all the public general statutes, as distinguished from a collection of selected statutes, such as the old *Abridgments* and *Chitty's Statutes of Practical Utility* of our own time. An edition of the statutes from Magna Charta to the end of Queen Anne's

reign was printed between 1810 and 1822 in 10 volumes by the Record Commissioners from the original records, under the title of the *Statutes of the Realm*; alphabetical and chronological indexes were issued in 1824 and 1828. An edition of the statutes, prepared by the Statute Law Committee, with all repealed Acts and parts of Acts omitted (see S. L. R.), coming down to 1878, was published by Government under the title of the *Statutes Revised*; and a second edition brought down to 1900 has since been issued in 20 volumes. As to the merits and the defects of various editions of the statutes, see Cooper, *Account of the Public Records*, ch. vi.

As to statute law, see LAW.

The principal works on statutes and their interpretation are: Coke's *Second Institute*, *Barrington on the Statutes;* and *Dwarris on Statutes*, and, in modern times, *Maxwell on the Interpretation of Statutes*, and *Craies on Statute Law*.

II. "Statute," also, sometimes means a kind of bond or obligation of record, being an abbreviation for "statute-merchant" or "statute-staple" (q.v.).

See STATUTES OF UNCERTAIN DATE.

Statute Fair. This meant the half-yearly assemblage of labourers at which the rates of hiring fixed pursuant to the Statute of Labourers (q.v.) were proclaimed. That Act has long been repealed: "hiring fairs" or "mops" are still, however, referred to as statute fairs. See MARKETS AND FAIRS.

Statute Labour. Under various ancient statutes the inhabitants of each parish were required either to do certain work—known as statute labour—annually upon the highways repairable by the parish, or to pay a composition. The last of these statutes was the 13 Geo. 3, c. 78; it was repealed by the Highway Act, 1835.

Statute Law Revision. See "S.L.R."

Statute Merchant; Statute Staple. A statute merchant was a bond acknowledged before the chief magistrate of some trading town pursuant to the statute *De mercatoribus*, 13 Edw. 1 (whence the name). A statute staple was a bond acknowledged pursuant to 27 Edw. 3, c. 9, before the mayor of the staple, that is to say, the grand mart for the principal commodities or manufactures of the kingdom, formerly held by Act of Parliament in certain trading towns. They were both originally intended to encourage trade by providing a speedy remedy for recovering debts. Every statute merchant or statute staple had to be sealed with the seals of the debtor and of the king, and enrolled. It was therefore a bond of record (see RECORD; ROLLS), and the addition of the king's seal made it of so high a nature that on failure of payment by the debtor at the day assigned, the writ of *De statuto stabulæ* might issue, and under that writ not only the body of the debtor might be imprisoned and his goods seized in satisfaction of the debt, but also his lands might be delivered to the creditor till out of the rents and profits the debt was satisfied; during that time the creditor was called tenant by statute merchant or statute staple, and had a chattel interest in the lands. (See ESTATE.) Statutes merchant and statutes staple formerly charged the land of the debtor; but this privilege was abolished by the Judgments Act, 1864. (See JUDGMENT.) It seems that statutes merchant and staple are, in theory, still payable, on the death of the debtor, in priority to his ordinary debts (see ASSETS). Statutes merchant and statutes staple are, however, now quite obsolete. See RECOGNIZANCE; STATUTO MERCATORIO.

Statute of Agreement. This was a popular alternative title of the statute (generally called the Statute of Kenilworth) 51 & 52 Hen. 3.

Statute of Frauds is the statute 29 Car. 2, c. 3, passed "for the prevention of frauds and perjuries." With this object it enacts (ss. 1 and 2) that leases of lands, tenements or hereditaments (except leases not exceeding three years, reserving a rent of at least two-thirds the value of the land) shall have the force of leases at will only, unless they are put in writing and signed by the parties or their agents. S. 3 requires assignments and surrenders of leases and interests in land (not being copyholds, etc.) to be in writing. Under the Real Property Act, 1845, the leases and other instruments specified in ss. 1, 2 and 3, must, unless they relate to copyhold, be under seal. S. 4 enacts that no action shall be brought upon any special promise by an executor or administrator to answer damages out of his own estate, or upon a guarantee, or upon an agreement made in consideration of marriage, or upon any contract or sale of lands, etc., or any interest in or concerning them, or upon any agreement that is not to be performed within a year, unless the agreement is in writing and signed by the party to be charged, or his agent; but the consideration for such guarantee need not (Mercantile Law Amendment Act, 1856, s. 3) appear in the writing. Ss. 5 and 6, and 19 to 23, as to wills, etc., are no longer in force (see WILL). Ss. 7 and 9 require declarations or creations of trusts

of lands, etc., and all assignments of trusts, to be in writing, signed by the party, but s. 8 exempts trusts arising by implication of law. S. 10 and 11 make the lands of a *cestui que trust*, when in the hands of his real representative, liable to his judgments and obligations. S. 12 (which made estates *pur autre vie* devisable, liable to the owner's debts, and descendible, unless otherwise disposed of, to his personal representative) was supplemented by the statute 14 Geo. 2, c. 20, s. 9, and was superseded by ss. 3, 6 of the Wills Act, 1837 (see OCCUPANCY). S. 16 enacted that no writ of execution against goods should bind the property therein until the writ was delivered to the sheriff to be executed; and this section, although it was repealed by the Statute Law Revision Act, 1881, and the Sale of Goods Act, 1893, is practically still in force, as it has been in substance re-enacted by s. 26 (1) of the Act of 1893, which provides also that a *bona fide* purchaser shall have a good title to goods purchased before actual execution of the writ. S. 17 enacted that no contract for the sale of any goods, wares and merchandises for the price of £10 or upwards should be good unless the buyer accepted and received part of the goods so sold, or gave something in earnest or part payment, or unless some note or memorandum of the contract were made and signed by the parties to be charged, or their agents; this section, although repealed by the Sale of Goods Act, 1893, was substantially re-enacted by s. 4 (1) of that Act, which substitutes "value" for "price." See also TENTERDEN'S ACT.

Statute of Gloucester. The statute 6 Edw. 1.

Statute of Uses. See USE.

Statutes at Large. See STATUTE.

Statutes of Distribution. See ADVANCEMENT; DISTRIBUTION; NEXT OF KIN.

Statutes of Limitation. See LIMITATION OF ACTIONS.

Statutes of the Realm. See STATUTE.

Statutes Revised. See STATUTE; S.L.R.

Statutes of Uncertain Date. These are a number of statutes made before the reign of Edward III., to some of which no date has been assigned by anyone, while others are by some authorities attributed to dates which cannot be regarded as certain. See the *Statutes of the Realm* (Vol. 1, pp. 197-250), and the *Statutes at Large* (Vol. 9, Appendix).

Statuto mercatorio, De. There were anciently two forms of this writ—one directed against a layman and the other against an ecclesiastical person. Where default was made in payment of a statute merchant by a layman, the writ commanded the sheriff to imprison him until the debt was satisfied: in the case of like default by an ecclesiastical person, the writ commanded the sheriff to levy the amount of the debt off the goods of such person.

Statutory Alien. A natural-born British subject who had become an alien pursuant to the Naturalization Act, 1870, was by s. 8 of that Act entitled a "statutory alien," and could, under that section, re-obtain his British nationality upon terms the same as those governing the naturalization of other aliens. The whole of that Act has been repealed by the British Nationality and Status of Aliens Act, 1914, which contains no substituted section. There is now, therefore, no difference, even in name, between a de-naturalized British subject and any other alien.

Statutory Rules and Orders. Very many modern Acts of Parliament contain provisions authorising the King in Council, a Government department, a local authority, a corporation, or some individual to make Rules and Orders on particular subjects. The Rules of the Supreme Court and the scores of Orders which have been made with regard to diseases of animals are instances of the result of this delegation of authority. Such Rules and Orders, if validly made, have the same effect as if they were expressly enacted by Parliament. Where the Act provides that any Rule or Order shall be laid before Parliament and shall become of no effect if either House resolve that it be annulled, then, in the absence of such a resolution, no Court can question the validity of the Rule or Order, but if no such reference to Parliament be provided, and if there be no section declaring that the Rule or Order cannot be questioned in any Court, then it is open to any Court, before which the Rule or Order may come, to decide whether the Rule or Order has been made *intra vires* or *ultra vires*.

This delegation of authority by Parliament had taken place in a few instances during the first hundred and fifty years after the Revolution of 1688. But it became common only after the accession of Queen Victoria; and during recent years it has been practised on a wholesale scale. It is now of everyday occurrence for Parliament to pass Acts in skeleton form and to leave Departments free to equip the skeletons as they think fit.

The Rules Publication Act, 1893, deals with Statutory Rules and Orders.

Since 1890 it has been customary to publish

under official sanction from time to time the public and general Rules and Orders in force. These are known as the Statutory Rules and Orders Revised. There are then annual volumes which keep the collection up to date until another collection is published—as was the case in 1905—of the public and general Rules and Orders in force on a later date.

Statuto stabulæ, De. An obsolete writ, as to which see STATUTE MERCHANT.

Statutum affirmativum non derogat communi legi. (An affirmative statute does not derogate from the common law.) If a statute be really only affirmative, that is to say, declaratory, it obviously makes no alteration in either the common or the statute law. Compare QUÆ COMMUNI, ETC.

Statutum de Admensuratione Terre. (Statute for the Measuring of Land.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 206), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as 33 Edw. 1, st. 6.

Statutum de Conspiratoribus. (Statute concerning Conspirators.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 216), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as 33 Edw. 1, st. 3.

Statutum de Finibus et Attornatis. (Statute concerning Fines and Attorneys.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 216), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as 15 Edw. 2.

Statutum de Gaveleto in Londinio. (The Statute of Gavelet in London.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 222), *s.v. Statutes of Uncertain Date*; printed also in the *Statutes at Large* as 10 Edw. 2. See GAVELET.

Statutum de Judeismo. See LES ESTATUS DE LA JEUERIE.

Statutum de Justic assign quod vocatur Rageman. See RAGEMAN.

Statutum de laboriis. A writ which anciently lay for the arrest of a labourer who refused to work as required by the Statute of Labourers. See LABOURERS.

Statutum de Magnis Assisis et Duellis. (Statute concerning the Great Assises and Battle.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 218), *s.v. Statutes of Uncertain Date*; printed also in the *Statutes at Large* (Vol. 9, App., p. 30). It is not really a statute, and is in fact merely an extract from the *Brevia Placitata* (q.v.).

Statutum de Mercatoribus. See ACTON BURNELL.

Statutum de Nova Custuma. See CARTA MERCATORIA.

Statutum de Pistoribus. (A Statute concerning Bakers, etc.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 203), *s.v. Statutes of Uncertain Date*, and also in the *Statutes at Large* (Vol. 9, App., p. 28) as of uncertain date.

Statutum de Protectionibus non allocandis. (Statute against allowing Protections.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 217), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as 33 Edw. 1, st. 1. See PROTECTION, WRIT OF.

Statutum de Respectu Militiæ habendo. (Statute for Respiting of Knighthood.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 229), *s.v. Statutes of Uncertain Date*, and in the *Statutes at Large* as the *Statutum de militibus*, 1 Edw. 2. It purported to give some relief from the hardship of compulsory knighthood.

Statutum de Rotelanda. See ROTELANDA.

Statutum de Sacramento Ministrorum Regis (Statute for Oaths of the King's Officers in the Eyre.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 232), *s.v. Statutes of Uncertain Date*; printed also in the *Statutes at Large* (Vol. 9, App., p. 30) as of uncertain date.

Statutum de Tenentibus per Legem Angliæ. (Statute concerning Tenants by the Curtesy of England.) Under these titles what Rastall calls "no statute but only one man's opinion," is printed in the *Statutes of the Realm* (Vol. 1, p. 220), *s.v. Statutes of Uncertain Date*; printed also in the *Statutes at Large* (Vol. 9, App., p. 29) as of uncertain date. It is really no more than an extract from Glanvil, *lib.* 7, c. 18.

Statutum de Viris Religiosi. See MORTMAIN.

Statutum de Wardis et Releviis. (Statute concerning Wards and Releviis.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 228), *s.v. Statutes of Uncertain Date*; printed in the *Statutes at Large* as 28 Edw. 1.

Statutum Domini Regis de Terris vendendis et emendis. (Statute of our Lord the King concerning the Selling and Buying of Land.) The title under which *Quia Emptores* (q.v.) is printed in the *Statutes at Large*.

Statutum Hibernie de Coheredibus. (The Statute of Ireland concerning Coparceners.)

An enactment (printed in the *Statutes of the Realm* as 20 Hen. 3, and in the *Statutes at Large* as 14 Hen. 3) which applied to Ireland the law of England as to land descending to coparceners.

Statutum sessionum. This meant the General Session held next, or within six weeks, after Easter, sitting under the statute 5 Eliz. c. 4, s. 11, to settle the rates of wages of artificers, husbandmen, labourers and workmen.

Stay. A stay of proceedings in an action is a suspension of them: thus, if the plaintiff is ordered to do something and fails to do it, the proceedings may, under the inherent jurisdiction of the Court, be ordered to be stayed until he complies with the order. So (under Ord. 58, r. 16) the Court may order execution to be stayed until an appeal to the Court of Appeal is decided. So also at any time after the presentation of a bankruptcy petition the Court may, under s. 9 of the Bankruptcy Act, 1914, stay any action, execution or other legal process against the debtor, unless the claim be one from which the debtor would not be released by discharge or unless the plaintiff is a secured creditor. An action shown by the pleadings to be frivolous or vexatious may be stayed under Ord. 25, r. 4. A stay of proceedings is sometimes produced *ipso facto*, without an express order to that effect, as where a party obtains an order for a new trial.

"Stay of proceedings" also sometimes means a total discontinuance of the action: thus, if an action in the King's Bench is compromised, an order staying the proceedings is generally obtained. In the Chancery Division the term is also so used, but in strictness it is only accurate when a decree or judgment has been given, for in such a case the suit or action cannot be dismissed, because the Court has adjudicated on it, and therefore all that can be done is to stay proceedings under the decree or judgment. Before decree or judgment the proper way of disposing of an action is either by discontinuance (q.v.), or by an order dismissing the action.

Stealing. See LARCENY; EMBEZZLEMENT; ROBBERY.

Steam Engines. At common law, steam engines were nuisances if and in so far as anyone was inconvenienced by such noise and smoke as emanated from them. The various Acts under which their use is legal on railways have taken away the remedy of proceedings for nuisance in respect of their use on a railway. Proceedings for damages are still available in case of negligent user; the production of smoke (q.v.) is, in theory, restrained by statute; and a remedy for fires caused by railway engines is provided by the Railway Fires Act, 1905.

The Acts (see LOCOMOTIVES) authorising the use of locomotives on highways do not exempt owners from liability for nuisance.

Steam Launch. For the purposes of the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), this means, not merely every steam launch properly so called, but any vessel propelled by any mechanical power whatever, which is not being used solely as a tug or for cargo and is not certified for 200 passengers (see s. 3).

Steam Whistles. No one can, without the sanction of the sanitary authority, use a steam whistle for the purpose of summoning or dismissing workmen; and any such sanction may be revoked by the Ministry of Health (Steam Whistles Act, 1872).

Steelyard; Stilyard; Stylehouse. The name of this place was derived from the German *stâl* (a sample), which was pronounced in much the same way as the German *Stael* (steel), and, through a mis-derivation, it came to be known as the Steelyard, although the proper name would have been Sample-yard.

The Steelyard was established about 1250 by certain Hanse merchants near what is now Ironbridge Wharf in the City of London, as a mart for their goods. The Hanse was deprived of its privileges by Edward VI., but remained in occupation of the Steelyard until it was expelled from England in 1597. The Hanseatic towns of Lubeck, Bremen, and Hamburg continued to own the Steelyard down to 1852, when they sold it to the South Eastern Railway Company. Part of Cannon Street Station stands on the site. See GUILDHALDA.

Stellionate. In the Scots law this, according to Erskine, includes every kind of fraud which had not a special name. It seems to have resembled, in its comprehensiveness, our common law cheat. The term is unknown to either our common or our statute law; but it was used in the Star Chamber, which, says Bacon, dealt with "crimes various of Stellionate."

Sterbrech; Strebrech. According to the *Termes de la Ley*, this was "the breaking obstructing, or making less of a highway."

Sterling. An early synonym of the penny, or *denarius*, as it was in mediæval Latin. Fleta writes of "*denar Angliæ qui sterling*

appellatur," and Stow writes: "*Paid in starlings which were pence so called.*"

"Sterling" was used subsequently as meaning coin of standard weight and fineness.

Stet billa. If the plaintiff in a plaint in the Mayor's Court of London had attached property belonging to the defendant and obtained execution against the garnishee, the defendant, if he wished to contest the plaintiff's claim, and to obtain restoration of his property, had to issue a *scire facias ad disprobandum debitum* (see SCIRE FACIAS); if the only question to be tried was the plaintiff's debt, the plaintiff in appearing to the *scire facias* prayed *stet billa*, "that his bill original," *i.e.*, his original plaint, "might stand, and that the defendant might plead thereto"; the action then proceeded in the usual way as if the proceedings in attachment (which were founded on a fictitious default of the defendant in appearing to the plaint) had not taken place. See FOREIGN ATTACHMENT.

Stet processus, in the practice, before the Judicature Acts, of the old common law Courts, was an entry on the record in an action whereby it was ordered, with the consent of the parties, that all further proceedings in the action be stayed. It could only be made with the consent of both parties, and apparently could only be entered as to the whole record. As there is now, under the present practice, no record in an action, it is difficult to see how a *stet processus* can be entered, though it is believed that orders to that effect were made since the Judicature Acts; they took effect as an ordinary stay of proceedings. But no modern judge would think of entering a *stet processus.*

Stew. Used only in the plural, as in the expression "the stews," which meant brothels, whose existence was tolerated down to the reign of Henry VIII. In the Rolls of Parliament for 1436 we find: "No person that had dwelled in the common Stywes": but the word is not used in any statute.

Steward was formerly used to denote an officer of the Crown, or of a feudal lord, who acted as keeper of a Court of justice; as, for example, the Lord High Steward (q.v.); and there is still the Lord Steward (q.v.) of the Royal Household. At the present day, the only other important example of the office occurs in the case of manors, for every manor has a steward, appointed by the lord, who theoretically acts as judge of the Customary Court Baron and the Court Leet, and as registrar of the freeholders' Court Baron. Practically, however, his duties are rather ministerial than judicial, for his chief function is to receive surrenders and grant admittances to the copyhold lands of the manor, and keep the Court roll. See COPYHOLD; COURT BARON; COURT LEET; MANOR.

Stick of Eels. Anciently this meant twenty-five eels. Ten sticks made a "bind."

Stickler. In the Rolls of Parliament, IV., 179/1, there is mention of a "stikker" (that is to say, "sticker") or woodcutter. Cowell (1607), through a clerical error, inserted the word as "stickler" in his dictionary, and the error has been repeated in dictionary after dictionary. Compare CORAAGE; JOURNEY HOPPER; MALETENT.

Stifling a Prosecution is agreeing, in consideration of receiving a pecuniary or other advantage, to abstain from prosecuting a person for a misdemeanour not giving rise to a civil remedy, *e.g.*, perjury. As a general rule, such an agreement is void and invalidates any transaction of which it forms part. (See COMPOUND; MISPRISION.) Where, as in the case of perjury, the offence is not a felony but is of public concern, the stifling of the prosecution is probably a misdemeanour at common law.

Stint.—I. A stint is a limit, and therefore a stinted right of common of pasture is one where the number of beasts allowed to be put on the common by each commoner is limited, as opposed to common *sans nombre.* (See SANS NOMBRE.) A right of pasture may also be stinted in respect of time. See VIEW AND DELIVERY.

II. Stint is also used in a special sense to denote the right of pasture of one of several persons who are tenants in common of land which they use as a common pasture ground for their cattle. Stinted pastures are grazing lands in moors, downs and wastes, which produce no crop, and which are open to each person who has a share in the pasture for a stinted or limited number of cattle. They are usually closed at certain seasons of the year for the better growth of the pasture, but are never held in severalty. The right of each joint owner of the herbage is known as a stint or cattle gate.

A stint is not a common, but a corporeal hereditament, and may be held for either freehold or customary estates. See COMMON; HEREDITAMENT.

Sometimes the lord of a manor has a "stint" or limited right of pasture on the waste, during a certain part of the year. See SHEEPWALK.

Stipendiary Magistrate. There is a general power to appoint "stipendiary magistrates," that is to say, salaried magistrates (to act instead of, or along with, justices of the peace) for boroughs under the Municipal Corporations Act, 1882, s. 161 (1), and for urban districts with populations of more than 25,000 under the Stipendiary Magistrates Act, 1863, s. 3. The last-mentioned enactment refers, not to "urban districts," but to "cities or places"; and such "cities or places" are now known as "urban districts" under the Public Health Act, 1875, and the Local Government Act, 1894, s. 21.

There are particular powers to appoint stipendiaries (1) for the Staffordshire Potteries under the Staffordshire Potteries Stipendiary Justice Acts, 1839 to 1895, as amended by the Local Government Board Provisional Order Confirmation (No. 3) Act, 1908; (2) for Manchester and Salford under the statute 7 & 8 Vict. c. 30, as amended by the statute 17 & 18 Vict. c. 20; (3) for Wolverhampton, and the surrounding district, under the statute 9 & 10 Vict. c. 65; and (4) for Chatham and Sheerness and the Thames Estuary under the Chatham and Sheerness Stipendiary Magistrate Act, 1867. The persons who may be appointed as stipendiary magistrates must be barristers of seven years' standing in the case of boroughs generally (Municipal Corporations Act, 1882, s. 161 (1)); of six years' standing in the case of the Potteries (Staffordshire Potteries Stipendiary Justice Act, 1839, s. 1) and Wolverhampton (9 & 10 Vict. c. 65, s. 1); of five years' standing in the case of urban districts generally (Stipendiary Magistrates Act, 1863, s. 3) and Chatham and Sheerness (Chatham and Sheerness Stipendiary Magistrate Act, 1867, s. 2); and of four years' standing in the case of Manchester and Salford (17 & 18 Vict. c. 20, s. 4). In no case is it necessary that the person to be appointed should ever have been a practising barrister. The Acts under which the various stipendiary magistrates are appointed provide that the office is held at the pleasure of the Crown.

The most important distinctions between the powers of a stipendiary magistrate and those of an ordinary justice are (1) that the stipendiary can do all things for which two ordinary justices are required (Summary Jurisdiction Act, 1848, s. 33; Indictable Offences Act, 1848, s. 29; Stipendiary Magistrates Act, 1858, s. 3; Stipendiary Magistrates Act, 1863, s. 5; Summary Jurisdiction Act, 1879, s. 20 (10)); and (2) that the stipendiary cannot act at any Court of gaol delivery or general or quarter sessions (Stipendiary Magistrates Act, 1858, s. 3; Stipendiary Magistrates Act, 1863, s. 5). With these exceptions his powers are those of an ordinary justice. He can act at licensing sessions as regards the grant or confirmation of licences (Licensing Act, 1872, s. 39).

As to London, see METROPOLITAN POLICE MAGISTRATE.

Stirpes. See PER STIRPES.

Stoc and Stovel. A forfeiture anciently incurred by one taken in the act of unlawfully carrying stoc (sticks) and stovel (fodder) out of woods.

Stock.—I. "Stock" primarily means a common fund belonging to a partnership or trading company, and used to enable it to carry on its business. (See FUND.) Thus what is now generally called the capital of a company was formerly called its "joint-stock," meaning the common or joint fund contributed by the members. (See JOINT-STOCK COMPANY.) The capital of a company is generally divided into shares (q.v.), so that "shares" and "stock" are in one sense the same thing: at the present day, however, "stock" is generally used in its secondary sense (*infra*) as opposed to "shares": but the Companies (Consolidation) Act, 1908, s. 285, expressly enacts that "share means share in the share capital of a company and includes stock except where a distinction between stock and shares is expressed or implied."

II. In its secondary sense, "stock" signifies a fund or capital which is capable of being divided into and held in any irregular amount. Thus, the ordinary Government funds (Consols, India Threes, etc.) are called stocks, because a person can buy them in any amount (such as £99 19*s.* 11*d.* as well as £100). A share or debenture, on the other hand, is of a fixed amount (such as £10, £50, £100), and is incapable of sub-division or consolidation. Many companies, however, have (under the Companies (Consolidation) Act, 1908, s. 41 (1), and the Companies Clauses Consolidation Act, 1845, s. 61) the power of converting paid-up shares into stock, and of converting debentures into debenture stock. See DEBENTURE STOCK.

Stock Exchange. The London Stock Exchange is an unincorporated private company. It has many rules which, unless they are recognised by the law, are binding upon its members only to such extent as they can be enforced by disciplinary action—such as expulsion—on the part of the committee. Upon persons who are not members the rules are not binding, unless in the eye of the law they

are reasonable. And the law will not regard as reasonable any custom which is in violation of law. Thus, under Leeman's Act (q.v.), all contracts for the sale of bank shares must set out the distinguishing number of each share sold. Members of the Stock Exchange habitually, as between themselves, disregard this enactment; but the custom under which they do this is not binding on persons who are not members of the Stock Exchange and who have no knowledge of the custom. It is indeed a question whether any such contract is not void to all intents and for all purposes. See CUSTOM; WAGER.

Stock-jobbing Act. A popular title of the statute 7 Geo. 2, c. 8, which was officially entitled, "An Act to prevent the infamous Practice of Stock-jobbing." It was repealed by the statute 23 & 24 Vict. c. 28; and stock-jobbing, if and when it amounts to wagering, is now dealt with like other kinds of wagers (q.v.). See BARNARD'S ACT; PUTTS AND REFUSALS; CONTANGO; BACKWARDATION.

Stockland. The same as soke-land. See BONDLAND.

Stocks, The. These consisted of two boards; on one side of each there were two semi-circular holes; and, when the boards were fastened together, there were two circular apertures just large enough to encircle the ankles of an offender sitting behind the boards.

Sitting in the stocks for a certain number of hours was from very early times a common punishment for minor offences. It was ordered every day by the Court leet (q.v.). Subsequently it was prescribed by various statutes. Under the statute 4 Jac. 1, c. 5, s. 1 (made perpetual by the statute 21 Jac. 1, c. 7, but repealed by the Licensing Act, 1872), a person fined for drunkenness was, in default of payment, to sit in the stocks for six hours; and under the Sunday Observance Act, 1677, s. 2, a criminal who, for instance, sells cigarettes on a Sunday must, in default of payment of a fine or in default of sufficient distress, "be set publicly in the stocks for the space of two hours"—unless indeed so much of the section as relates to the stocks has been impliedly repealed by the Summary Jurisdiction Act, 1884, s. 3.

There are now no stocks except such as are preserved as curiosities. None of them are ever used.

Stolen Goods. See ADVERTISEMENTS; POSSESSION; RECEIVING STOLEN GOODS; RESTITUTION; REVESTING.

Stone. "A stone shall consist of fourteen standard pounds" (Weights and Measures Act, 1878, s. 14). Formerly the stone varied enormously. The statute 11 Hen. 7, c. 4, s. 2, had enacted that there should "be but only xiiii [14] lb. to the stone of Wolle"; yet even in 1845 the customary stone for wool was twenty-four pounds in some places. The customary stone for which the prices of beef and of mutton are quoted is, in some places, still only eight pounds. And there were, and still are, many other variations of the weight. Of course (see WEIGHTS AND MEASURES) the law recognises only the statutory stone.

Stop Order. In Chancery practice, when a fund (in cash, stock or other securities) is in Court in a cause or proceeding, any person claiming an interest in it may apply to the Court for an order to prevent it from being paid out or otherwise dealt with, without notice to the applicant. The application is made by petition where a fund exceeding £1,000 has been paid into Court under the Trustee Act, 1893, and in other cases is made by summons, which (if opposed) must be supported by an affidavit showing the applicant's interest in the fund. Stop orders differ from restraining orders and distringas notices (q.v.) in being applicable only to funds in Court. Stop orders are also applicable to documents or securities deposited with an officer of the Court. (See PAYMENT INTO COURT.) See Ord. 46, rr. 12, 13.

Stoppage in transitu is the right which an unpaid vendor has to resume the possession of goods sold upon credit and to retain them until tender of the price where the vendee has become insolvent before they come into his possession (Sale of Goods Act, 1893, s. 44). Thus if A orders goods of B, and B despatches them by carrier to A's address, but before they have been actually delivered he hears that A has stopped payment (s. 62 (3)), then B is allowed to countermand delivery before or at the place of destination, and to resume the possession of the goods, according to that equitable principle in the law of contract by which one party may withhold performance on the other becoming unable to fulfil his part of the contract. But it is not an unlimited right; for the vendor cannot exercise it if he has parted with documents sufficient to transfer the property, and the vendee, upon the strength of them, has sold the goods to a *bonâ fide* purchaser without notice (s. 47). The vendor's right ceases as soon as the *transitus* is determined, whether by the goods arriving at their destination, or by being delivered to a person on behalf of the vendee, or by the carrier agreeing, between himself

and the vendee, to hold the goods for him, not as carrier, but as his agent (s. 45).

There is also a so-called right of stoppage *in transitu* in cases where there is in fact no transit, as where goods are sold whilst in the possession of a warehouseman, and some act remains to be done for the completion of the sale. (See DELIVERY ORDER; DOCK WARRANT.) As to this see the Factors Act, 1889, s. 10.

Story. Joseph Story was born in 1779 at Marblehead near Boston, in the United States of America, became member of Congress in 1809, judge of the Supreme Court in 1811, professor at Harvard in 1829, and died 10 September, 1845. His principal works are: *Equity Jurisprudence; Law of Bailments; Agency; Bills of Exchange; Promissory Notes; Partnership;* and the *Conflict of Laws.*

Stranding. Under the memorandum (q.v.) in an ordinary policy of marine insurance, the underwriters are not liable for damage sustained by certain perishable articles, unless in consequence of a general average, or a stranding of the ship. "Stranding" does not occur when a vessel takes the ground in the ordinary and usual course of navigation, in a tideway or harbour, upon the ebbing of the tide or the like, so that she will float again on the flow of the tide; but it occurs if the vessel takes the ground by reason of some unusual or accidental occurrence, *e.g.*, in consequence of an unknown and unusual obstruction in the harbour.

Stranger. In law a person is said to be a stranger to a transaction when he takes no part in it, or no part producing any legal effect. Thus a person who is not a party to a deed, contract, etc., is said to be a stranger to it. (See PART; PRIVY.) So when a promise is made to a person, but he has neither taken any trouble or charge upon himself, nor conferred any benefit on the promsior, but the trouble has been sustained or benefit conferred by another, the promisee is said to be a stranger to the consideration. See CONSIDERATION.

A "stranger in blood" means no relation. The Schedule to the Stamp Act, 1815, speaks of "any stranger in blood to the deceased." A bastard (q.v.) is a "stranger in blood" for certain purposes unless legitimised *per subsequens matrimonium.*

Straw, Man of. A person without means. The term is not known, otherwise than colloquially, to the law. It is, however, much used in connection with the transfer to a man, absolutely without means, of shares to escape calls and of leases in order to escape liability in respect of covenants. In respect of shares such a transfer, for a nominal or without consideration, will not relieve the transferor of liability if the shares be those of a mine within the Stannaries Act, 1869 (see s. 35); but in every other case the transfer, if it completely vests the shares in the transferee as absolute owner, will relieve the transferor of all liability except such as may, in the event of a winding-up, attach to him as being on the "B" list (see A AND B LISTS). As regards leases, such an assignment, unless it be in breach of a covenant not to assign without the consent of the lessor, will completely relieve the lessee of all liability in respect of covenants running with the land, amongst which are included, of course, the covenant to repair or to put or leave in repair.

Street. In the law, as elsewhere, this, in the absence of statutory definition, means a road with continuous houses on each side of it. But statutory definitions have very much extended the meaning of the term for the purposes of various Acts. The Towns Improvement Clauses Act, 1847, s. 3, declares it to include "any road, square, court, alley and thoroughfare within the limits" to which that Act applies. Definitions to much the same effect, but in different words, are contained in the Waterworks Clauses Act, 1847, s. 3, the Towns Police Clauses Act, 1847, s. 3, and the Public Health Act, 1875, s. 4. The Public Health (London) Act, 1891, s. 141, is equally comprehensive, and goes even further by declaring that a road is not outside the definition merely because there are no houses along it.

Street Betting. See BETTING.

Street Musician. A street musician who makes himself a public nuisance is indictable as such; but, of course, no one is so foolish as to indict him; and the householder remained practically at the mercy of the street musician and the street singer until Bass' Act (q.v.) was enacted. Under that Act any street musician, organ grinder or singer can be arrested and summarily convicted if, on being required by any householder (personally or through a servant or a constable) to go away, for any reasonable or sufficient cause (which must be stated to him), such as illness or interference with the occupation or pursuits of the household, he continues to perform near the house.

Under various bye-laws made under statutory powers of the London County Council and the metropolitan boroughs, the performance of street musicians, etc., in various streets, etc., is an offence punishable summarily. In towns other than London, music,

etc., in the streets can be regulated or prohibited under various local Acts, or under bye-laws made in pursuance of the Municipal Corporations Act, 1882, s. 23, and the Local Government Act, 1888, s. 16.

Street Performances; Street Trading. See CRUELTY TO CHILDREN.

Strict Settlement. See SETTLEMENT.

Strike. There is, of course, no question as to the right of an individual workman to cease to work, provided that he does so without breach of contract and without making himself or his family chargeable to the parish. As to the cessation of work by workmen acting in conjunction with one another, which constitutes a strike, see COMBINATION.

Striking. Striking a jury is what is more commonly known as nominating and reducing (q.v.).

Striking out a pleading or part of a pleading takes place when the Court makes an order to that effect, either for the purpose of amendment (q.v.) or to compel one of the parties to do some act. Thus if a defendant fails to comply with an order for discovery, he is liable (under Ord. 21, r. 21) to have his defence struck out, and to be placed in the same position as if he had not defended the action.

Striking off the Roll. See SOLICITOR.

Stuff Gown is the robe worn in Court by utter barristers. See KING'S COUNSEL.

Sturges-Bourne's Act. A popular title of the Vestries Act, 1818, and also of the Poor Relief Act, 1819.

Sub-agent; Sub-contractor. When an agent employs a person as his agent, to assist him in transacting the affairs of his principal, the person so employed is called a sub-agent. In the absence of an agreement to the contrary, there is no privity between the principal and the sub-agent; therefore, the principal is not liable to the sub-agent for his remuneration, and he cannot sue the sub-agent for negligence or misconduct; he must sue the agent. But if the agent has an express or implied authority to employ a sub-agent, privity of contract arises between the principal and the sub-agent, and the principal may sue the sub-agent for misconduct.

Similarly, when a contractor makes a contract with a sub-contractor to carry out his contract, or part of it, there is no privity between the principal contractee and the sub-contractor.

Subduct. In probate practice, to subduct a caveat is to withdraw it.

Subinfeudation, while it was allowed, was what took place when a tenant in fee simple of land granted the whole or part of it to another person in fee simple, to hold of him as his tenant, so that the relation of tenure, with its incidents of fealty, services, etc., was created between them. The practice of subinfeudation being found to decrease the power and wealth of the great landholders (the barons), it was abolished in Edward the First's reign by the statute known as Quia Emptores (q.v.). Therefore, at the present day, if A holds land of B in fee simple, and wishes to grant it to C, he can only do so on the term that C shall hold it of B, and not of himself (A). See FEUDAL SYSTEM; SEIGNORY; TENURE.

Subjacent. See SUPPORT.

Sublato fundamento cadit opus (*Jenk. Cent.* 106). (If the foundation be removed, the building comes down.)

Sublato principali tollitur adjunctum (*Co. Litt.* 389). (The principal being taken away, its adjunct is also taken away.) Thus, under the old law, when the estate to which a warranty was annexed was defeated, the warranty was also defeated.

Sub-lease. See LEASE.

Submission. A submission to arbitration is an instrument by which a dispute or question is referred to arbitration. (See ARBITRATION.) When the reference is made by the order of a Court or judge, the order is called a reference; submission denotes an agreement between the parties. Such an agreement may be either general (that is, an agreement to refer to arbitration all future disputes arising out of a specified matter), or a particular submission (that is, an agreement to refer to arbitration a dispute which has already arisen). A general submission is commonly contained in articles of partnership and other agreements extending over a long period. A particular submission may be revoked by either party, unless there is an agreement to make the submission a rule of Court. A general submission cannot be revoked in any case. See RULE OF COURT.

Sub-mortgage. See MORTGAGE.

Subnervare. To hamstring. It would appear to have been anciently the custom—if Jacob is correct—*Meretrices et impudicas mulieres sub-nervare*; but it is not clear whether this was done under colour of the law or by zealous social reformers acting without authority.

Subornation of Perjury. This consists of the procuring of a person to commit perjury. At common law it was, and under the Perjury

Act, 1911, s. 7 (1), it still is, punishable in the same way as perjury. The attempt to suborn perjury is also a misdemeanour under s. 7 (2) of that Act, just as it was at common law.

Subpœna is a writ issued in an action or suit requiring the person to whom it is directed to be present at a specified place and time, and for a specified purpose, under a penalty (*sub pœna*) of £100. The varieties of subpœna now is common use are: (i) the *subpœna ad testificandum*, used for the purpose of compelling a witness to attend and give evidence, either in Court or before an examiner or referee; and (ii) the *subpœna duces tecum*, used to compel a witness to attend in Court or before an examiner or referee, to give evidence and also bring with him certain documents in his possession specified in the subpœna. There are also (iii) the subpœna to show cause, which must be served upon an infant when he comes of age if a judgment against him during infancy has given him a day to show cause against it; and (iv) the subpœna to name a solicitor which the one party to an action can serve upon the failure of the other party to appoint a solicitor in the place of a solicitor who has died or become incapable of acting. These last two subpœnas are issued under the old Chancery practice: see Ord 72, r. 2.

Under the old Chancery practice, every suit was commenced by a writ of subpœna requiring the defendant to appear; hence in the old books "subpœna" is equivalent to "suit in equity" or "bill of complaint." Under the more modern practice, the subpœna was endorsed on the bill of complaint. Now every action is commenced by writ of summons. The subpœna to hear judgment was another kind used in Chancery practice: it was issued by the party setting down a cause for hearing and was served on the opposite party. If the party served did not appear at the hearing, the Court might make a decree against him.

Subpœna Office in Chancery. This office (like the Sealer (q.v.), etc.) was abolished by s. 28 of the Court of Chancery Act, 1852, which transferred to the Clerks of Records and Writs such work as there was to be done.

Subreption. In ecclesiastical law this means the obtaining of a faculty, dispensation, etc., by a suppression of any material fact. Compare OBREPTION.

Subrogation in its general sense is the substitution of one person or thing for another, so that the same rights and duties which attached to the original person or thing attach to the substituted one. Thus, if a person insures a ship which is lost by a collision caused by the negligence of another ship, he may recover the value of the ship from the underwriters, and then they are subrogated to his rights so as to be able to bring an action against the persons who caused the collision. (See INSURANCE.) There is no subrogation as regards life or accident insurance; the insurances to which it applies are only marine and fire insurances. Compare SURROGATE, who is a person subrogated, *quoad* certain matters, for the bishop.

Subscribe; Subscription. To subscribe is literally to "write under," and is sometimes opposed to "sign," because a signature is not necessarily placed at the end or bottom of an instrument. (See SIGN; WILL.) A subscribing witness is the same thing as an attesting witness. See ATTEST.

Subsequens matrimonium tollit peccatum præcedens (*Reg. Jur. Civ.*). (A subsequent marriage removes the previous sin.) But in our law it does not legitimate children born before the marriage. See BASTARD.

Subsidy. From about the year 1300 to the reign of Anne this word had several different meanings. During the fourteenth and fifteenth centuries it generally meant the import and export duties on cloth, wool, leather and skins, and the tonnage and poundage granted to the king for special occasions (see Parl. Rolls, 1340, the statute 27 Edw. 3, st. 1, c. 4; the statute 5 Rich. 2, st. 2, c. 3, etc.). This meaning was preserved even after the Restoration (see the statutes 12 Car. 2, c. 4, and 6 Anne, c. 48). In the sixteenth century it meant mainly the tax of 4*s.* in the pound on land and 2*s.* 8*d.* in the pound on moveables from time to time voted, and all through it had the wider general meaning of any tax imposed by Parliament.

The term was extended by Coke and others to the taxes known as tenths (q.v.) and fifteenths (q.v.). They also classified the duties on cloth, wool and leather as "perpetual subsidies" (apparently because they were granted almost as of course) and other taxes as "temporary subsidies" (apparently because their grant was not so common), but both the one kind and the other were in fact payable only when Parliament voted them.

Substantive Law. See ADJECTIVE.

Substituted Service. See SERVICE.

Substitution; Substitutional; Substitutionary. Where a will contains a gift of property to a class of persons with a clause providing that, on the death of a member of the class

before the period of distribution, his share is to go to his issue (if any), so as to substitute them for him, the gift to the issue is said to be substitutional or substitutionary. A bequest to such of the children of A as shall be living at the testator's death, with a direction that the issue of such as shall have died shall take the shares which their parents would have taken, if living at the testator's death, is an example. Under such a gift the issue of children dead at the date of the will cannot take anything.

Subtraction is where a person refuses or neglects to perform a duty. The term is chiefly used in connection with services and tithes. In the law of real property, subtraction is where a person who owes any suit, duty, custom or other service to another, withdraws or neglects to perform it; the principal services which are the subject of subtraction are fealty, suit of Court, rent, and customary services. (See SECTA.) In the case of fealty, suit of Court, and rent, the remedy is by distress; an action also lies for rent and for subtraction of customary services. (See SERVICE.) In practice, however, the wrong of subtraction is not of common occurrence.

In ecclesiastical law, subtraction is the injury of withholding tithes from the rector or vicar. For this injury, a suit lies in the ecclesiastical Courts, unless the tithes only amount to £50 or under, or unless there is a dispute whether they are payable. But now almost all tithes have been commuted into rent-charges, for recovering which a special mode of proceeding by distress has been provided, so that suits of subtraction are now quite obsolete. See TITHES.

Sub voce (s.v.). Under the title.

Succession; Successor.—I. In the primary meaning of the word, succession is where property passes on the death of a corporation sole to his successor; "for," (*Co. Litt.* 8B) "as the heire doth inherit to the ancestor, so the successor doth succeed to the predecessor." Therefore, in a conveyance of land to a bishop, parson, or any other sole corporation, the limitation must be to him "and his successors"; if it were "to him and his heirs" or "in fee simple," he would take in his personal capacity, and if there were no words of limitation he would take for his life only. (See FEE; HEIR; WORDS OF LIMITATION.) In some cases a corporation sole can also take personal property by succession. See CHURCHWARDEN.

There are also statutory modes of succession: thus, where land is conveyed to trustees for persons associated together for religious, educational, literary, scientific or artistic purposes, it passes to their successors in office without conveyance.

The succession of the Crown (the sovereign being a corporation sole) resembles the descent of land, except (i) that in the case of a sovereign dying and leaving no son but several daughters, the Crown descends to the eldest alone; and (ii) that it can only descend to Protestants. See DEMISE.

II. A succession takes place, within the meaning of the Succession Duty Act, 1853, where a person becomes beneficially entitled to or interested in property upon the death of another. The person so becoming entitled is called "the successor," and the person from whom he derives his title or interest is called "the predecessor." Thus, if A by deed settles property on B for life, and after his death on C, then on B's death a succession takes place, C being the successor and A the predecessor. So, if A dies intestate and entitled to land, a succession to his heir-at-law takes place. Where a person exercises a general power of appointment which he has become entitled to on the death of another person, he is deemed to be entitled to the property so appointed as a succession derived from the donor of the power (s. 4). If, therefore, he exercises it by will, two successions take place on his death, one from the donor to the donee (appointor), and another from the appointor to the appointee. But where a person exercises a limited power which he has become entitled to on the death of another person, the appointee (and not the appointor) is deemed to take the property as a succession derived from the donor of the power (s. 4). The object of the Act being to impose a duty on all dispositions and devolutions of property not chargeable under the Legacy Duty Acts, the terms "succession," "successor" and "predecessor" are in effect applicable only to successions arising from settlements *inter vivos* of real and personal property, and from descents or testamentary dispositions of real and leasehold estates. (See LEASEHOLDS.) Where a testator directs real estate to be sold, the proceeds are chargeable (under the Legacy Duty Act, 1805) with legacy, and not with succession, duty. See SUCCESSION DUTY; LEGACY DUTY.

Succession Duty. This is a duty which was first imposed by the Succession Duty Act, 1853, on gratuitous acquisition, on death, of property in respect of which no legacy (q.v.)

duty is payable, unless the property is specially exempted from succession duty. Since 1853 a large number of statutes, which cannot be enumerated here, have dealt with the duty. Under the Succession Duty Act, 1853, s. 10 (as amended by the Finance (1909-10) Act, 1910, s. 58 (1)), the rate is now, in the case of acquisition (1) by a husband, wife, lineal ancestor or lineal descendant of the deceased, or the husband or wife of any such person, 1 per cent.; (2) by a brother of sister of the deceased or a descendant of such brother or sister, or the husband or wife of any such person, 5 per cent.; and (3) by any other person, 10 per cent. Under the Customs and Inland Revenue Act, 1881, s. 41, and under the Customs and Inland Revenue Act, 1888 (as amended by the Finance Act, 1894, s. 1, Sch. 1), where neither probate (q.v.) nor estate (q.v.) duty is payable, class (1) pays an additional 10s. per cent., and each of the remaining classes pays an additional 1½ per cent.

No succession duty is payable where the principal value of all successions on the same death does not amount to £100 (Succession Duty Act, 1853, s. 18). As to other cases in which succession duty is not payable see LEGACY DUTY; that title requires to be amended by inserting after the word "payable" in line 4, col. 1, p. 524, the words "by class (1) of the above-mentioned persons."

In the case of deaths since 1st August, 1894, succession duty on property of which the successor is competent to dispose, is payable on the market value thereof less the amount of estate duty payable (Finance Act, 1894, s. 18 (1)), and succession duty on property of which the successor is not competent to dispose is payable on the value—calculated according to the tables annexed to the Succession Duty Act, 1853—of an annuity equal to the annual income of the property (Succession Duty Act, 1853, ss. 21, 31).

As to the meaning of "successor," and the correlative "predecessor," see SUCCESSION.

Succurritur minori: facilis est lapsus juventutis (*Jenk. Cent.* 47). (A minor is to be assisted: a mistake of youth is easy.) Compare IN JUDICIIS, ETC; MELIOREM CONDITIONEM, ETC. See EXPECTANT HEIR.

Sue.—I. To sue a person is to bring an action, suit or other civil proceeding against him.

II. In the suing and labouring clause in a policy of insurance, the meaning of the word "sue" is not clear, although the meaning of the clause as a whole is well settled. See SUING AND LABOURING.

Sufferance. See TENANT AT SUFFERANCE.

Sufferance Wharf. A place appointed by order under the hands of the Commissioners of Customs and Excise (made pursuant to s. 14 of the Customs Consolidation Act, 1876) for the lading and unlading of goods liable to customs duties.

Suffragan. See BISHOP.

Suggestio falsi is an active misrepresentation, as opposed to a *suppressio veri*, or passive misrepresentation. See MISREPRESENTATION: compare OBREPTION; SUBREPTION.

Suggestion. Formerly, changes of the parties to an action in the King's Bench Division could be entered on the roll (or record of the proceedings in an action) by a "suggestion" (that is to say, an allegation) of them; and this made the action continue in the names of the new parties so as to prevent abatement (q.v.). Now the practice in such a case is as mentioned under REVIVOR.

As to suggestion of breaches, see BREACH.

Suicide is where a person kills himself. Deliberate suicide by a sane person is a felony, formerly punishable by forfeiture of the offender's goods and chattels to the Crown, and by an ignominious burial in the highway with a stake driven through his body, and without Christian rites of sepulture; but after 1824 the only consequences were burial in a churchyard or other burying ground between 9 and 12 at night without Christian rites; and since 1882 interment is as described under BURIAL. In practice, very slight evidence is sufficient to induce a coroner's jury to return a verdict of temporary insanity, which makes the suicide no crime. See INQUEST; FELO DE SE.

Sui juris. In Roman law, persons were divided into two classes, according as they were *sui* or *alieni juris*. Persons subject to the *potestas* of a father, or the *manus* of a husband, or the *mancipium* of a master, were said to be *alieni juris*; the class, therefore, included all persons having a father or other ascendant living (unless they had been emancipated or otherwise freed from the *patria potestas*); all married women who had been married with certain formalities; and all slaves. All other persons were *sui juris*, so that a child of a few years old, if he had no father or other ascendant living, and had not been adopted by anyone, was *sui juris*, although he was under disability.

In English law, the term "*sui juris*" (though taken from the Roman law) is used

in quite a different sense. A person is said to be *sui juris* if he is not subject to any general disability. Therefore, infants, lunatics, convicts and a few other persons, are not *sui juris*, because they cannot enter into contracts or dispose of their property with the same freedom as ordinary persons. (See DISABILITY; GUARDIAN; INFANT; NEXT FRIEND; CURATOR.) Married Women, under the common law, were for certain purposes classed with infants and lunatics: the Married Women's Property Acts (q.v.) have entirely altered their position.

Suing and Labouring Clause is a clause in a policy of marine insurance, generally in the following form: "In case of any loss or misfortune, it shall be lawful to the assured, their factors, servants and assigns, to sue, labour and travel for, in, and about the defence, safeguard and recovery of the" property insured, "without prejudice to this insurance; to the charges whereof we the assurers will contribute." The object of the clause is to encourage the assured to exert themselves in preserving the property from loss. They are now under a statutory duty to do so (Marine Insurance Act, 1906, s. 78 (4)).

Suit is a generic term, and denotes any legal proceeding of a civil kind brought by one person against another. Suit includes action (Judicature Act, 1873, s. 100). The term is, however, used in opposition to "action." Formerly the most important kinds of suit in this sense were those brought by bill of complaint (q.v.) and information (q.v.) in the Court of Chancery, now abolished. A proceeding for nullity or dissolution of marriage, etc., in the Probate, Divorce and Admiralty Division of the High Court is called a suit.

In the technical sense of the word, a bond or recognisance given to a public officer as security is said to be put in suit when proceedings are taken to enforce it. Thus, in the practice of the Chancery Division a bond which has been given as security for costs is put in suit by leave of the Court, when the occasion arises, by the person whose costs were intended to be secured.

As to suit in the sense of a service, see SECTA; SUIT OF COURT.

Suit of Court is a service theoretically due from every tenant of land forming part of, or held of, a manor, and consists in the duty of attending the Courts held by the lord. Free tenants or tenants of freehold land are bound (either personally or by attorney) to attend their lord's Court Baron (q.v.), while copyhold tenants are bound to attend personally at the Customary Court. These Courts are still held in some manors. See SECTA; SERVICE; SUBTRACTION.

Suit of the Peace. Prosecution. Thus, in the statute 5 Hen. 4, c. 15, it was declared that the king had "pardoned" (or agreed to stop) "the suit of his peace" for all offences with certain specified exceptions.

Suitors' Deposit Account. Formerly suitors in the Court of Chancery derived no income from their cash paid into Court, unless it was invested at their request and risk; now, however, it is provided by the Chancery (Funds) Act, 1872, that all money paid into Court, and not required by the suitor to be invested, shall be placed on deposit and shall bear interest at 2 per cent. per annum for the benefit of the suitor entitled to it. The sum required for the payment of this interest is produced by placing all money in Court not required for meeting current demands in the hands of the Commissioners for the Reduction of the National Debt, who invest it in Government securities. This arrangement was called the "Suitors' Deposit Account," and, though the name is no longer in use, the money held on the account is still there.

Suitors' Fee Fund was a fund arising partly from the fees of the Court of Chancery, and partly from the surplus income of the Suitors' Fund (q.v.). Out of it the salaries and other expenses of the Court of Chancery were paid. By the Courts of Justice (Salaries and Funds) Act, 1869, the Suitors' Fee Fund was transferred to the Commissioners for the Reduction of the National Debt, and the salaries and expenses formerly paid out of it were charged on the Consolidated Fund.

Suitors' Fund was a fund belonging to the Court of Chancery which consisted of two parts. Fund "A" consisted of Government stocks resulting from the investment of so much of the money in Court belonging to the suitors as was not required for current purposes. Part of the income arising from these investments was employed in paying certain expenses of the Court, and the balance was invested in Government stocks, which formed Fund "B." Subsequently the surplus income of both funds was annually added to the Suitors' Fee Fund (q.v.). By the Courts of Justice, etc., Act, 1869, the Suitors' Fund was transferred to the Commissioners for the Reduction of the National Debt, and the Consolidated Fund was made liable for the due payment of the money which belonged to the

suitors and had been invested as above stated. See PAYMASTER-GENERAL.

The Official Solicitor of the Court of Chancery (q.v.) was originally called the Solicitor to the Suitors' Fund, by reason of his duties in connection with that fund.

Suit Silver. A small annual sum paid by the tenants of some manors as a commutation for appearance at the Court of the lord.

Suling. A ploughland.

Sullereye. Stated by Coke to have been a ploughland (q.v.). Murray suggests that the word has no existence except as the result of typographical error, and that *sullinge* (=*suling* (q.v.)) was what Coke wrote.

Sumage. A toll levied from persons on horseback.

Summa est ratio quæ pro religione facit (*Co. Litt.* 341) (An argument which is in the interest of religion carries very great weight.)

Summary. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings, that is, in comparison with the proceedings which alone would have been applicable, either in the same or analogous cases, if summary proceedings had not been available. Summary proceedings are sometimes concurrent with regular proceedings, that is, either may be adopted.

Petitions, special cases, motions, and summonses, not being interlocutory proceedings in an action or suit, are instances (chiefly occurring in the Chancery Division, under the statutory jurisdiction of the High Court) of summary proceedings in civil cases, as opposed to suits or actions. For examples see PETITION; SUMMONS. There are also summary modes of putting an end to an action, without carrying it on to trial, *e.g.*, by obtaining judgment where the defendant has no defence (see JUDGMENT) or by interpleader proceedings.

In criminal cases, summary proceedings are those which may be had and concluded before a magistrate or justices of the peace, as opposed to regular proceedings by indictment or information and trial by a jury. The Summary Jurisdiction Act, 1879, has much extended the power of magistrates to dispose of cases summarily, provided that the accused, if an adult, consents, and that the offence is one of minor gravity, *e.g.*, larceny. (See COMPLAINT; JUSTICE OF THE PEACE; INFORMATION; QUARTER SESSIONS.) The Probation of Offenders (q.v.) Act, 1907, has given the justices large powers of dealing leniently with suitable cases; and the Criminal Justice Administration Act, 1914, has much facilitated the release on bail (q.v.) pending trial, has materially extended the power to deal summarily with offenders, and has given justices wide powers of mitigating the severity of their sentences.

As to summary process, see PROCESS and the Summary Jurisdiction (Process) Act, 1881.

As to summary proceedings in ecclesiastical matters, see CAUSE.

Summary Reception Order. This, in a case where there is no petition, is an order for reception as a lunatic, which can be made, as regards a lunatic not under proper care and control or who is cruelly treated or neglected, by a judicial authority (q.v.) (Lunacy Act, 1890, s. 13), and, as regards lunatics at large or pauper lunatics who ought to be sent to an asylum, by any justice or by a chairman of a board of guardians who is duly authorised by the Lord Chancellor (*ib.* ss. 14-22). See RECEPTION ORDER; URGENCY ORDER.

Summer Time. The Summer Time Act, 1922, provides that (s. 1): "the time for general purposes in Great Britain shall, during the period of summer time, be one hour in advance of Greenwich mean time"; that (s. 2 (1)) the "Act shall apply to Northern Ireland, the Channel Islands and the Isle of Man in like manner as to Great Britain"; and that (s. 3 (1)) "the period of summer time shall be taken to be the period beginning at two o'clock, Greenwich mean time, in the morning of the day next following the third Saturday in April, or, if that day is Easter Day, the day next following the second Saturday in April, and ending at two o'clock Greenwich mean time, in the morning of the day next following the third Saturday in September."

The Act expires on 31st December, 1923, unless Parliament otherwise determines (s. 3 (3)). It replaces the Summer Time Act, 1916, which was in force only up to the end of the Great War: see War of 1914-18. The Act of 1916 first established summer time. Under it the summer time of 1916 was from 21st May to 1st October, and that of each subsequent year during the currency of the Act was between such dates as were fixed by Order in Council

Summing-up, on the trial of an action by a jury, is a recapitulation of the evidence adduced, in order to draw the attention of the jury to the salient points. The counsel for each party has the right of summing-up his evidence, if he has adduced any, and the

judge finally sums up the whole. (See REPLY; RIGHT TO BEGIN; TRIAL.) The expression "summing-up" always means the summing-up of the judge.

Summoneas. The initial word of a number of obsolete writs such as the *summoneas ad warrantizandum* (the process whereby the vouchee in a common recovery was brought in), the *summoneas in auxilium* (the old Aid Prayer (q.v.)), etc.

Summoner. From the fourteenth to the eighteenth century this meant an officer who summoned persons to appear in various Courts. Compare APPARITOR.

Summonitores scaccarii. The summoners of the Exchequer.

Summons. A summons is a document issued from the office of a Court of justice, calling upon the person to whom it is directed to attend before a judge or officer of the Court for a certain purpose. See WRIT OF SUMMONS; MOTION; PETITION; SUMMONS FOR DIRECTIONS.

I. In the High Court of Justice, a summons is a mode of making an application to a judge or master in chambers (q.v.). Summonses are therefore only used on applications which are either of subsidiary importance or which can be conveniently disposed of in chambers, such as applications for enlarging the time to take certain steps, for discovery and production of documents, for appointing examiners and receivers, for leave to sign judgment under Ord. 14 (see JUDGMENT), for the committal of a judgment debtor, etc., etc. In simple cases, the solicitors of the parties attend on their behalf: in difficult or important cases counsel are instructed.

In the King's Bench Division some summonses must be heard in the first instance by a master, and others by a judge. An appeal lies from a master to a judge in chambers, and from the judge to the Divisional Court: as to this see CHAMBERS.

In the Chancery Division every summons is heard in the first instance before a master, but either party, if dissatisfied with the decision, is entitled to have the summons heard by the judge in chambers. This is called adjourning the summons to the judge. The judge may also adjourn the summons to be argued in Court; or if he refuses to do so, the dissatisfied party may either move before the judge in Court to rescind the order made in chambers, or may appeal to the Court of Appeal. See CHAMBERS.

Summonses in the Chancery Division are of two kinds:—

(1) Summonses in pending actions and matters. These are of infinite variety, as already indicated (*supra*). An important kind is the summons to proceed. When a judgment or order has been made in Court directing accounts, inquiries, or other steps to be taken in chambers, the matter is brought before a master under Ord. 55, r. 33, by a summons "to proceed under the judgment (or order), dated the, etc." Appointments before the master are obtained on this summons, from time to time, until the matter is disposed of, and the certificate made. See CERTIFICATE.

(2) Originating summonses:—

The term originating summons includes "Every summons other than a summons in a pending cause or matter" (Ord. 71, r. 1A). This kind of summons was first introduced in 1852 by the statute 15 & 16 Vict. c. 86, s 45 (now repealed), under which an order for the administration of the personal estate of a deceased person might be made on the application, by way of originating summons, of a creditor, legatee or next of kin. The use of originating summonses has been much extended by the R. S. C., as made in 1885, and subsequently, which now provide for four kinds of those summonses:—(i) the general form, which is that issued under Ord. 54A (to obtain a declaration as to the construction of an instrument), under Ord. 55, r. 3 (for the determination, without any administration of the estate or trust, of the rights of persons interested, the ascertainment of any class of creditors, etc., or the furnishing of accounts), under Ord. 55, r. 4 (for the administration of a trust or of the real as well as the personal estate of a deceased person), under Ord. 55, r. 5A (for the foreclosure or redemption, etc., of a mortgage); (ii) an originating summons, not *inter partes*, as in the case of an application for the appointment of new trustees, in which case there is a respondent but no plaintiff or defendant; (iii) an originating summons under Ord. 54, r. 4F, in cases, such as those under the Arbitration Act, 1889, where no appearance is required; and (iv) an *ex parte* originating summons (where, as in the case of an infant absolutely entitled, there is no one who can be served) for the appointment under the Settled Land Acts of trustees of the settlement. It will thus be seen that many matters may now be brought before the Court by originating summons in which before the introduction of that method of procedure an action would have been necessary. The Courts will not, as a rule, allow the costs of an action if an originating summons—the

Super-tax. See INCOME TAX.

Supervision. See WINDING-UP.

Supervisor. Another name for the "overseer" whom a testator sometimes used to name in his will. See EXECUTOR.

Super visum corporis. (Upon view of the body.) See CORONER.

Supplemental Bill. See BILL OF COMPLAINT.

Supplemental Deed. A deed which is expressed to be supplemental to a previous deed. Such a deed has the same effect as one endorsed (q.v.) on the previous deed (Conveyancing Act, 1881, s. 53).

Supplicavit. When a justice of the peace refuses to compel a person to give security to keep the peace, the person exhibiting the articles (that is, the person making complaint) may apply to the High Court for a *supplicavit*, which is a mandatory writ compelling the justice to require security. But as the High Court may make an order for security to be given without the intervention of a justice of the peace, this writ is not used now. See ARTICLES OF THE PEACE; BREACHES OF THE PEACE.

Supply, Committee of. The House of Commons sits in Committee of Supply when resolutions are passed in favour of making to the Crown such grants as are necessary for all services (known as Supply Services) other than those services (known as Consolidated Fund Services) the expenses of which are charged on the Consolidated Fund (q.v.).

Support. The right of support to land is either a natural right or an easement.

I. Every proprietor of land is entitled to so much lateral support from his neighbour's land as is necessary to keep his soil at its natural level, that is, his neighbour must not excavate so close to the boundary as to cause his land to fall or subside. Similarly, if one person is entitled to the surface of land, and the land beneath the surface belongs to another proprietor, the owner of the surface is entitled to vertical support as against him; that is, the owner of the subjacent land must not cause subsidence of the surface unless he has an easement entitling him to do so. (See EASEMENT.) This natural right to support, whether lateral or vertical, does not extend to the case of land, the weight of which has been increased by buildings, unless it can be shown that the land would have sunk if there had been no buildings on it.

II. The right to extraordinary support, that is, to the support of land on which buildings have been erected, and which consequently, requires more support than it did in its natural condition, is an easement. It was formerly considered that such an easement was not within the provisions of the Prescription Act (q.v.), on the grounds that it is a negative easement; and that the second section of the Act only applies to positive easements. Both these propositions were discredited, if not overruled, in 1877; and it is now established that the easement of support may not only exist by virtue of an express grant, or in the case of an ancient messuage, but may also be acquired by twenty years' uninterrupted enjoyment.

The easement of support to a building by a building, or the right of the owner of a building to have it lean against and be supported by a building belonging to his neighbour, seems to stand in the same position. It may also arise by implied grant under a disposition by the owner of two tenements. See EASEMENT.

See EASEMENT; LOST GRANT; PRESCRIPTION; ANCIENT MESSUAGES.

Suppressio veri. See SUGGESTIO FALSI.

Supreme Court of Judicature is the Court formed by the Judicature Act, 1873 (as modified by the other Acts which, together with the Acts of 1873 and 1875, are collectively entitled the Judicature Acts, 1873 to 1910), in substitution for the various superior Courts of law, Equity, Admiralty, Probate and Divorce, existing when the Act was passed, including the Court of Appeal in Chancery and Bankruptcy, and the Exchequer Chamber. It consists of two permanent divisions, viz., a Court of original jurisdiction, called the High Court of Justice, and a Court of appellate jurisdiction, called the Court of Appeal. Its title "supreme" is now a misnomer, as the superior appellate jurisdiction of the House of Lords and Privy Council, which was originally intended to be transferred to it, has been allowed to remain. See COURT.

The full title of the Court of Appeal is His Majesty's Court of Appeal (Judicature Act, 1873, s. 4); but the customary title is recognised by the Interpretation Act, 1889, s. 13 (2). The Court consists of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls (Judicature Act, 1875, s. 4), five ordinary judges (Judicature Act, 1881, s. 3) entitled "Lords Justices of Appeal" (Judicature Act, 1877, s. 4), the President of the Probate, Divorce and Admiralty Division (Judicature Act, 1881, s. 4), and every person who has held the office of Lord Chancellor (Judicature Act, 1891, s. 1). The Lord Chancellor is *ex officio* the president of the Court (Judicature Act, 1875, s. 6).

The effect of ss. 18 and 19 of the Judicature Act, 1873, is to give a right of appeal to the Court of Appeal from every judgment or order of the High Court except in criminal matters (*ib.*, s. 47) or in matters relating to costs (*ib.*, s. 49), and except in cases where the right is taken away either by statute or by rules made under statutory authority. An appeal direct to the Court of Appeal also lies in some cases from decisions of inferior Courts. Thus, under the Agricultural Holdings Act, 1908, s. 13 (3), there is an appeal to the Court of Appeal from the opinion of the County Court judge on a case stated by an arbitrator as to a point of law. The judges are the Lords Justices of Appeal (q.v.), who are to be distinguished from the Lords of Appeal in Ordinary (q.v.). As to appeals from decisions of the Court of Appeal, see APPELLATE JURISDICTION ACT.

The High Court of Justice is that branch of the Supreme Court of Judicature (q.v.) which exercises (i) the original jurisdiction formerly exercised by the Court of Chancery, the Courts of Queen's Bench, Common Pleas and Exchequer, the Courts of Probate, Divorce and Admiralty, the London Court of Bankruptcy, the Court of Common Pleas at Lancaster, the Court of Pleas at Durham, and the Courts of the judges or commissioners of assize, and (ii) the appellate jurisdiction of such of those Courts as heard appeals from inferior Courts. It is a Superior Court of Record (see COURT), and was originally composed of the Lord Chancellor (who is the president but never (except occasionally, as in the case of Lord Birkenhead, for the purpose of dealing with accumulation of work) sits as a judge in the High Court), the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the three Vice-Chancellors of the former Court of Chancery, such of the puisne judges of the old common law Courts as had not been transferred to the Court of Appeal, the judge of the former Probate and Divorce Court, the judge of the former Admiralty Court; and subsequently has consisted of the Lord Chancellor and the judges of Her Majesty's High Court of Justice who were appointed after the Judicature Act came into operation.

The High Court was also originally divided into five temporary divisions, corresponding to, and composed of the same judges as, the old Courts which it replaced, viz., the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce and Admiralty Division, and it was enacted that most of the business which before the Act was within the exclusive jurisdiction of any one of the old Courts should be assigned to the corresponding Division of the High Court, that is, the action or matter was to be commenced in that Division: thus actions for the execution of trusts were to be assigned to the Chancery Division, and proceedings relating to the revenue to the Exchequer Division, provision being made for the transfer of business from one Division or judge to another when necessary.

On the death in 1880 of the Lord Chief Justice of England and the Lord Chief Baron of the Exchequer, who were in office when the Judicature Act came into operation, a council of judges was held, and on the resolution then passed an Order in Council (which came into effect on the 26th February, 1881) was made under the 32nd section of the Judicature Act, 1873, abolishing the offices of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron, and consolidating the "three common law divisions," that is, the Queen's Bench, Common Pleas and Exchequer Divisions, into one division called the Queen's Bench Division, under the presidency of a Lord Chief Justice. (See COUNCIL OF JUDGES; KING'S BENCH DIVISION.) The High Court, therefore, now consists of three divisions, namely, the Chancery Division, the King's Bench Division, and the Probate, Divorce and Admiralty Division. The rules as to the distribution of business above mentioned have not been altered, except in so far as the business of the three former common law Courts is now all allocated to the King's Bench Division.

Under the practice of the old common law Courts, almost every question of law arising in an action, such as demurrers, motions for new trials, for leave to enter verdicts, etc., had to be heard by the full Court (or Court sitting *in banc*) composed of at least three judges. To allow of the continuance of this practice, at all events for some time, the Judicature Act, 1873, ss. 40, 41, provided for the sittings of divisional Courts (see DIVISIONAL COURTS) of the High Court (not to be confounded with the Divisions of the High Court), to be composed of two or three (but not more) judges of the High Court, including, if practicable, one or more judges of the Division to which the business to be heard was assigned. In the Chancery, Probate, Divorce and Admiralty Courts, on the other hand, all

the business was transacted before a single judge, each cause or matter in chancery business being marked for a judge by name, who heard all applications and questions in it from its commencement to its end. This practice is continued in the divisions corresponding to those Courts. With the view of extending this practice to the "common law" divisions of the High Court, the Appellate Jurisdiction Act, 1876, s. 17, provided that in future every action and proceeding in the High Court and all business arising out of the same, should, so far as is practicable and convenient, be heard and disposed of before a single judge, and that all proceedings in an action subsequent to the trial or hearing, should be taken before the judge before whom the trial or hearing took place.

An appeal lies to the Court of Appeal from all judgments and orders of the High Court in its ordinary jurisdiction. See APPEAL: compare CRIMINAL APPEAL.

Sur; Sur Disclaimer; Sur Disseisin. "Sur" = "upon." In the titles of real actions "sur" was used to point out what the writ was founded upon. Thus a real action brought by the owner of a reversion or seignory, in certain cases where his tenant repudiated his tenure, was called a writ of right sur disclaimer. So a writ of entry sur disseisin was a real action to recover the possession of land from a disseisor. See also CUI IN VITÂ; CUI ANTE DIVORTIUM; WRIT OF ENTRY.

Sur cui in vita. See CUI IN VITA.

Surcharge. To surcharge a common is to put more cattle thereon than the pasture and herbage will sustain, or than the commoner has a right to do. As to the remedy for this injury, see ADMEASUREMENT. Where an account is being investigated in the Chancery Division, and the party at whose instance it is taken shows that an item has been omitted for which the accounting party ought to give credit, he is said to surcharge the accounting party. (See ACCOUNT SETTLED; FALSIFY.) Under the Public Health Acts, where an auditor disallows an item of expenditure by an urban authority as being illegal, he surcharges it on the person who made or authorised it (Public Health Act, 1875, s. 247 (7)); in other words, he makes him personally liable for the amount; and other statutes relating to local authorities give like power of surcharge.

Sureties of the Peace and Good Behaviour. A person may be ordered to find sureties for his keeping the peace upon conviction on indictment of any felony under the Criminal Law Consolidation Act, 1861. He may be ordered to find sureties both for the peace and for good behaviour upon conviction on indictment of any misdemeanour. An offender released upon probation (q.v.) may be required to find sureties for good behaviour; and so also a child or young person convicted of any offence may be released under s. 107 of the Children Act, 1908, upon surety being given for his good behaviour.

Upon a substantive application before justices, a person may be required to find sureties of the peace if Articles of the Peace (q.v.) are exhibited against him; and he may be required to find sureties for his good behaviour in cases where, even though no fear of violence is proved, it is shown that he has incited to breaches of the law or is a common breaker of the peace, or is otherwise not of good behaviour. In both cases the procedure is that indicated under ARTICLES OF THE PEACE.

At common law a justice may require sureties of the peace from anyone committing a breach of the peace in his view, and any Court having criminal jurisdiction may take the like course with either a complainant or a defendant in any case where the circumstances warrant it, even though no formal application comes before the Court.

"Good behaviour" includes "the peace," but "the peace" does not include "good behaviour." Thus one bound to the peace will not commit a breach of his recognisance if he incites to violation of the law; but one bound to good behaviour will commit a breach of his recognisance if he assaults another.

Surety. A surety is a person who binds himself to satisfy the obligation of another person, if the latter fails to do so: thus, if A owes B money, and C, for good consideration, promises B that he will pay him the money if A does not, here C is a surety for A, the principal debtor, and his promise constitutes a contract of suretyship. In the general sense of the word, therefore, a surety is the same thing as a guarantor (q.v.), but in practice the term is usually restricted to the case of a person who binds himself by a bond: thus, it is frequently necessary for a person who enters upon an office to obtain one or more sureties who bind themselves by a bond to answer for his acts and defaults in the performance of the office, either generally, or to a limited amount or a limited time. A security given in a judicial proceeding also generally takes the form of a bond or recognisance with sureties. See BAIL; RECOGNISANCE; SECURITY.

If a surety satisfies the obligation for which

he has made himself liable, he is entitled to recover the amount from the principal debtor. If one of several sureties is compelled to pay the whole amount or more than his share, he is entitled to contribution from his co-sureties (see CONTRIBUTION); and if one of them has become insolvent, the solvent sureties may be compelled to contribute towards payment of the whole debt, as if the insolvent surety had never been liable.

It is also a general rule that a surety is entitled to the benefit of all the securities which the creditor has against the principal; so that if a debt is secured by a bond with a surety, and also by a mortgage, and the surety pays the debt, he is entitled to stand in the place of the mortgagee and obtain repayment out of the mortgaged property. And by the Mercantile Law Amendment Act, 1856, s. 5, every surety who pays the debt or performs the duty for which he is liable, is entitled to have assigned, to himself or a trustee, every judgment, specialty or other security held by the creditor, and to use the name of the creditor in any action or other proceeding.

If the creditor releases the principal debtor, this will discharge the surety from liability, unless the creditor reserves his rights against the surety; such a release is then in effect merely a covenant not to sue the principal debtor. (See RELEASE; JOINT.) The surety may also be discharged by a variation of the contract by the creditor, or by the substitution of a new contract before breach of the old one.

Surface. See LAND; MINERALS; SUPPORT.

Surgeons. See MEDICAL PRACTITIONERS.

Surmise is a suggestion or allegation.

In ecclesiastical practice, an allegation in a libel (q.v.) is called a surmise. A collateral surmise is a surmise of some fact not appearing in the libel.

Surname. The name (such as Smith or Jones) borne by all the members of a family in addition to their Christian names. A man cannot change his Christian name, but, unless he be an alien, he can adopt any surname he pleases, provided of course he does so for no dishonest purpose; and he can do so without taking any formal steps in the matter, though it is usual to execute a deed-poll declaring the fact, and to enroll the deed-poll at the Central Office, and to advertise the change in the newspapers. A more expensive course is to change the name and then to get a royal licence to use the new name: the licence costs £50 if the change be made in compliance with a name and arms clause (q.v.) or £10 if made for any other reason (Stamp Act, 1891, Sch. I.), and, moreover, heavy fees are payable at the Heralds' College.

Under the Aliens Restriction (Amendment) Act, 1919, s. 7, no alien can use for any purpose any name other than that by which he was ordinarily known on 4th August, 1914, unless the Home Secretary gives him permission, or unless he has obtained a royal licence; but a married woman may use any name lawfully used by her husband.

See BASTARD; TRADE NAMES.

Surplice Fees. Customary payments made to clergymen officiating at marriages, baptisms and funerals.

Surplusage is where there is something over or in excess. In pleading, surplusage is the allegation of unnecessary matter, and is forbidden. See Ord. 19, r. 27.

Where A holds land of B in fee at a certain rent (*e.g.*, five shillings), and B holds the same land of C at a less rent (*e.g.*, one shilling), and C purchases A's estate, so that B's seignory or mesnalty (q.v.) becomes extinct; here C is bound to pay to B a rent equal to the difference between A's rent and B's rent (*i.e.*, four shillings), and this is called, in the old books, a rent by surplusage.

When, upon a sheriff lodging his account with the Clerk of the Pipe (q.v., and QUIETUS), it appeared that there was a balance due to him he could, down to 1716, obtain payment only by means of a "record of surplusage," which was dilatory and expensive The statute 3 Geo. 1, c. 15, s. 7, enacted that in such case any sheriff (other than the sheriffs of the Welsh counties and of the Counties Palatine of Chester, Durham and Lancaster, none of whom passed their accounts before the Clerk of the Pipe) could obtain payment from the Treasury upon producing a certificate of surplusage from the Clerk of the Pipe, unless the surplusage was occasioned by the payment, under various statutes then in force, of rewards for the arrest of "clippers, coiners, highwaymen and house-breakers." The certificate of surplusage, like the *quietus* (q.v.) is now obsolete.

Surplusagium non nocet (*Branch. Max.* 5th ed., 216). (Surplusage does no harm.) Compare UTILE, ETC.

Surprise. Where a person enters into a contract, conveyance, or the like, with excessive haste or want of deliberation, this fact may give rise to the inference that there was no true consent, or that the consent was not free, and that the transaction ought therefore to be set aside on the ground of surprise or

improvidence. See CATCHING BARGAINS; UNDUE INFLUENCE.

In procedure, a judgment or order may be set aside, or a new trial ordered, on the ground of surprise, if the Court thinks that substantial injustice has been done. Thus, if a verdict is obtained as the result of the trial coming on unexpectedly so that defendant's witnesses were not in attendance, a new trial may be granted upon terms under Ord. 39, r. 6.

Surrebutter, under the common law practice before the Judicature Acts, was the pleading which followed the rebutter. See PLEADING.

Surrejoinder, under the practice, before the Judicature Acts, both at common law and in Chancery, was the pleading which followed the rejoinder. It had long been obsolete in Chancery. See PLEADING.

Surrender, in the law of real property, is, in the words of Coke, "a yeelding up an estate for life or yeares to him that hath an immediate estate in reversion or remainder, wherein the estate for life or yeares may drowne [*i.e.*, merge] by mutuall agreement betweene them." Thus, if A, being tenant in fee of land, grants a lease for years to B, and B surrenders the term to A, it ceases to exist, being merged in A's reversion. Surrenders are of two kinds—in deed and in law. A surrender in deed is one made by express words. It must now, in every case, be effected by a deed. Surrenders in law take effect by implication or operation of law, without express words. Thus, if a lessee accepts a new lease incompatible with his existing lease, this operates as a surrender in law of the latter. See MERGER.

A surrender is the principal mode of alienating copyholds. Every tenancy in copyholds, though practically amounting to more or less absolute ownership, is in theory merely a tenancy at will, which is, of course, incapable of being transferred as such by the tenant; for if he attempted to convey his interest by a common law conveyance, he would forfeit his estate. (See TENANT AT WILL.) Hence, when a copyholder wishes to transfer his interest in the land, he surrenders it into the hands of the lord, in favour of (technically, *to the use of*) the intended transferee, or surrenderee, as he is called; and the lord thereupon admits the surrenderee, that is, accepts him as tenant in lieu of the surrenderor. (See ADMITTANCE.) "The essential part of a surrender appears," says Elton, "to be the giving up of the customary seisin to the lord; and where this is effectually done, the form of relinquishment is not, as it seems, essential, unless the rights of a third person are injured." Formal surrenders are made by the surrenderor delivering to the lord, steward, or other person taking the surrender, a rod, straw, glove, or other symbol which represents the seisin of the land. A memorandum of the surrender is entered on the court rolls, and a copy of it signed by the surrenderor and steward, and formerly on parchment, is delivered to the surrenderee. A mortgage of copyholds is generally effected by a conditional surrender, or surrender made upon condition that, on payment of the mortgage debt on a certain day, the surrender shall be void. If the debt is not paid on the day fixed, the mortgagor still has an equity of redemption in the same way as if the land were freehold.

As to surrenders of copyholds for estates tail, and as disentailing assurances, see ESTATE TAIL.

Formerly, copyholds in some manors were not devisable at all, or devisable subject to restrictions. In many manors they were devisable only by the testator making a surrender to the use of his will, and then devising the land as he wished; but this necessity was abolished by the statute 55 Geo. 3, c. 192; and, by the Wills Act, 1837, full provision was made for the devise of copyholds in all cases.

Formerly, surrenders were usually made in Court, that is, at a customary Court Baron (q.v.); and surrenders made "out of Court" (that is, at any other place or time), were in some cases invalid, unless they were afterwards presented in Court by the homage. Now, however, the entry of the surrender on the rolls of the manor is sufficient: see the Copyhold Act, 1894, s. 85, which replaces s. 89 of the Copyhold Act, 1841.

The late Mr. Elton says, at p. 79 of the first edition of his work on *Copyholds*: "In the extensive district comprised in the manor of Taunton Deane in Somersetshire, there is a peculiar conveyance known as a Dayne Surrender, which is used when a copyholder alienes his tenement, but desires to retain a part for his own life. The purchaser is admitted to the whole of the land (which is called the Dayne Tenement), and pays a fine of one-third of the amount of an ordinary admittance fine, and further makes himself responsible for the heriot to be paid on the death of the tenant for life. On the death of the surrenderor, the whole land belongs to the Dayne tenant." He adds that, in the

manor of Yetminster, in Dorset, a somewhat similar custom existed.

A corporation created by charter may give up or surrender its charter to the Crown, unless the charter was granted under an Act of Parliament (*e.g.*, the repealed Municipal Corporations Act, 1835) imposing indefeasible duties on the bodies to which it applies.

Surreption. A form of the word subreption (q.v.).

Surrogate is a person appointed by a bishop or an ecclesiastical judge to act for him, *e.g.*, to grant licences of marriage.

Survey. See COURTS OF SURVEY.

Survivorship is where a person becomes entitled to property by reason of his having survived another person who had an interest in it. The most familiar example is in the case of joint tenants, the rule being that on the death of one of two joint tenants the whole property passes to the survivor (but see JOINT; JUS ACCRESCENDI). See COMMORIENTES.

Suskin. A Dutch coin which was in use about the year 1400. It seems to have been of the same value as the English silver farthing. See GALLEY HALFPENNY.

Suspension.—I. An estate, interest, right or remedy is said to be suspended when it is extinguished for a time, but may afterwards revive: thus, if a copyholder in his own right becomes seised of the manor in right of his wife, the copyhold interest in his land will be suspended during the coverture; so if a person holding land in fee by certain rents or services, acquires the seignory during his life, the rents, services, etc., are suspended during his life. See UNITY OF POSSESSION.

II. In ecclesiastical law, suspension is of two kinds. Suspension relating only to the clergy is where a clergyman is temporarily deprived either of his office or his benefice, or both: suspension from office prevents him from officiating as a minister; suspension from benefice deprives him of the profits of the living. The other sort of suspension, which extends to the laity as well as the clergy, is *suspension ab ingressu ecclesiæ*, or from the hearing of divine service and receiving the holy sacrament.

Sus. per coll. An abbreviation for *suspendatur per collum* (let him be hanged by the neck), which, while Latin was used in the Courts (see FRENCH), was written by the judge opposite the name of each prisoner against whom sentence of death had been pronounced.

Swainmote. See ATTACHMENT OF THE FOREST.

Swans. The white swan on other than private waters is a royal bird and the property of the King, unless it bears "a swan mark" indicating that it is the property of a subject. A "swan mark" is a distinguishing mark which some person has, either by royal grant or prescription, acquired the right to use. A subject has also such property in a swan which is tame and kept on private waters as to make the stealing of the swan larceny at common law. The taking of swans' eggs by any person on land where he has not the right to kill game is punishable summarily (penalty 5*s*. for each egg) under the Game Act, 1831, s. 24; but it is to be noted that swans are not game. See BIRDS.

Swearing. See OATHS; CURSING.

Swearing the Peace. See ARTICLES OF THE PEACE.

Sweep. See CHIMNEY SWEEPER

Sweets. "The expression 'sweets' means any liquor which is made from fruit and sugar, or from fruit or sugar mixed with any other material, and which has undergone a process of fermentation in the manufacture thereof, and includes British wines, made wines, mead and metheglin" (Finance (1909-10) Act, 1910, s. 52).

Swings. See WHIRLIGIGS.

Sworn Clerks. See SIXTY CLERKS, THE.

Syndic. Where a testator appointed a corporation aggregate to be his executor, administration with the will annexed used to be granted to their "syndic," that is, a person specially appointed by the corporation for the purpose.

This procedure was found to be inconvenient when it became an ordinary thing for a testator to appoint as his executor one of the insurance or other companies (see PUBLIC TRUSTEE) which are prepared to act as trustees and also as executors: and now any such company can itself take out a grant of probate in its corporate name (Administration of Justice Act, 1920, s. 17; S. R. & O., 1921, No. 649).

The term syndic means generally a person appointed by a corporation to act for it as regards a particular matter. The University of Cambridge appoints various syndics; these persons are members of the committees known as syndicates, and would elsewhere be described as members of the Library Committee and so forth.

Syndicate is a mercantile term which came into use about fifty years ago to denote an association of persons for a temporary pur-

pose. Thus, if several persons unite to subscribe for, or guarantee the subscription of, an issue of shares or bonds, with a view to dividing the risk and the profit, they are said to form a syndicate. Sometimes a syndicate is formed by persons who are individually possessed of property of the same description (generally shares, or the like), and wish to subject it to a common management, with a view to its realisation, after which each member takes the profit or loss accruing in respect of his proportion. A syndicate will obviously be in law a mere partnership unless it be registered as a company.

The word is also used as meaning a council or body of syndics (q.v.); and it is so used at Cambridge: thus there is the Library Syndicate, which really means no more than the Library Committee.

Syngraph. This was the same thing as the chirograph (q.v.) except that the word *Syngraphum* was written in the middle of the deed instead of *Chirographum*.

Synod. A synonym of "council" as the latter word is used in ecclesiastical law. Apart from the General Councils held at Rome (with which our law is not concerned), there was in England down to 1555 the National Council of all the English bishops and archbishops. Now there are the Convocations (q.v.) of the two Provinces, and in each diocese there is the Diocesan or Episcopal Council at which the bishop meets his clergy in conference.

Synodal. The contributions anciently paid by the clergy to the bishop or the archdeacon upon the occasion of the Easter visitation. In the statute 34 Hen. 8, c. 16, *synodals* are termed *synodics*.

Synodales testes. Literally, those who gave evidence at the synod. Anciently the urban and rural deans were the *synodales testes*, one of their duties being to inform the diocesan synod of notorious cases of misconduct amongst both laity and clergy. Subsequently the *testes* were a priest and two or three laymen for every parish; and later the churchwardens or the sidesmen performed, or were supposed to perform, similar functions.

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Table Rents. Such of the revenues of a bishopric as were appropriated to household expenses. Compare BORDLANDS.

Table Waters. This expression is defined by the Finance (New Duties) Act, 1916, as meaning (s. 4 (2)) "any aerated waters and any beverages sold or kept for sale in bottles other than (*a*) any liquor for the sale of which an excise licence is required, and (*b*) syrups or other liquors intended to be used only in a diluted form. The Act (s. 4 (1)) imposed an excise duty of fourpence per gallon on such waters when they are sweetened or fermented, and of eightpence a gallon when they are of any other kind. The makers or vendors of such waters must take out annual licences, on which there is an excise duty of ten shillings (*ib.*, s. 6; Finance Act, 1916, s. 10). On imported table waters there are customs duties at the same rate as the excise duties of fourpence and eightpence above mentioned (Finance Act, 1916, s. 7 (1)).

These were the first taxes on soda water and other such waters.

Tabula de Amalfa, La. See AMALPHI, ETC.

Tacit. A communication of intention is said to be tacit when it consists of mere silence.

As to the distinction between "tacit" and "constructive," "express" and "implied," see those titles.

Tacking. In the law of mortgages, where land is mortgaged by ordinary deeds of mortgage to several persons in succession, each ignorant of the security granted to the other, the general rule is that they rank in order of date. But the first mortgagee, who alone obtains the legal estate, has this advantage over the others, that if he takes a further charge on a subsequent advance to the mortgagor, without notice of any intermediate second mortgage, he will have priority in respect of his subsequent advance over the second mortgagee: in other words, he will be in the same position as if he had made his subsequent advance at the same time that he made his original advance. And if a third mortgagee, who has made his advance without notice of a second mortgage, can procure a transfer to himself of the first mortgage, and thus acquire the legal estate, he may tack or annex his third mortgage to the first mortgage, and so postpone the second mortgagee: in other words, he is in the same position as if he had advanced the amounts of both the first and third mortgages at the date when the first mortgage was made. The term "tacking," though especially applied to the case of a subsequent mortgagee getting in the legal estate, is also applied to the first case given above, namely, that of a first mortgagee adding a subsequent advance to his first mortgage. The essentials to the operation of tacking are—(i) possession of the legal estate;

(ii) absence of notice, at the time of making the advance to be tacked, of the existence of the incumbrance which will be postponed.

Tacking was abolished from the 7th August, 1874, to the 1st January, 1876, by the operation of the Vendor and Purchaser Act, 1874; it was restored as from the latter date by the Land Transfer Act, 1875, without prejudice to anything done in the interval.

See CONSOLIDATION OF SECURITIES; MORTGAGE; PRIORITY.

Tail. See ESTATE TAIL.

Take and Carry Away. After 1733 (see FRENCH) it was, until 1916 (see INDICTMENTS), necessary, in an indictment for the common law offence of larceny, to aver that the prisoner "did feloniously take and carry away." See ASPORTATION.

Tales (dissyllabic). If, when a jury has been summoned, a sufficient number of jurors do not appear, or, if by reason of challenges or exemptions, a sufficient number do not remain to make up the proper number, either party may pray a *tales*, that is, ask the Court to make up the deficiency. A *tales* (Latin = such) is a supply of *such* men as were summoned upon the first panel. For this purpose a writ of *decem tales*, *octo tales*, used to be issued to the sheriff; but by the County Juries Act, 1825, s. 37, the judge is empowered to award a tales *de circumstantibus*, that is, to command the sheriff to return so many other men duly qualified as shall be present or can be found, to be taken first from those summoned on the common jury panel, if the deficiency is of special jurors, and if there are not enough common jurors, then from any persons who are present in Court or can be found. The jurors so added are called talesmen; and that word is pronounced as tailsmen.

Talfourd's Act. A popular title both of the statute 2 & 3 Vict. c. 54 ("relating to the Custody of Infants"—repealed and replaced by the Custody of Infants Act, 1873), and of the Copyright Act, 1842 (repealed and replaced by the Copyright Act, 1911).

Taliation, Sureties of. See LEX TALIONIS.

Talis interpretatio in ambiguis semper fienda est, ut evitetur inconveniens et absurdum (4 *Inst.* 328). (Ambiguous words should be interpreted in such a way that inconvenience and absurdity is avoided.) At 1 *Rep.* 52 the same maxim is quoted with the omission of the words *in ambiquis* and the addition of the words *et ne judicium sit illusorium* (and that the decision is not illusory).

Talis non est eadem. (The like is not the same.) Another version of NULLUM SIMILE, ETC.

Tallage. Taxes generally. See HIDAGE; DE TALLAGIO.

Tally. A stick of rectangular section across one side of which were cut notches denoting payments. The stick being split lengthwise so that on each half there was one half of each notch, the debtor retained one half of the stick as evidence of the payment and the creditor kept the other half as a record.

Tallies were used in the Exchequer (q.v.) from the earliest times: the two Deputy Chamberlains of the Exchequer and the Talley-Cutter attended the Talley Court to deal with them. The statute 23 Geo. 3, c. 82, s. 2, provided that, when the then two Chamberlains of the Exchequer should have ceased to hold office, the use of tallies should cease also; but tallies still continued in use until 1826, when the last of the chamberlains died.

Tally Trade; Tallyman. A form of trade under which goods are sold upon credit and are paid for by weekly instalments; and a man carrying on such a trade.

Taltarum's Case. A case decided in 1473 in which the judges laid it down that an estate tail might be barred by a common recovery See RECOVERY.

Tam quam; Tanquam. The action generally called a *qui tam* action. The name *tam quam*, like *qui tam*, is formed of words found in the phrase "*qui tam pro domino rege quam pro se ipso.*"

Tarde. A return made formerly upon a writ by the sheriff when it came to him so late that he could not execute it in time: see Dalton, *Office of Sheriffs*, p. 163, and *Fitzherbert N. B.*, 38.

Tavole Amalfitane. The Laws of AMALFI (q.v.).

Taxation; Taxes.—I. In public law, taxation signifies the system of raising money for public purposes by compelling the payment by individuals of sums of money called taxes.

Taxation is of two kinds. Some taxes are imposed on persons generally, without reference to locality, to raise money for the public expenses of the United Kingdom; other taxes are imposed on persons residing, or owning or occupying property, within a certain district, to raise money for the public expenses of that district. Taxes of the first class are sometimes called imperial, being required for the *imperium* or supreme Government; sometimes parliamentary, because their amount is fixed by Parliament. Taxes of the second class are called local, parochial, municipal, etc., to

denote that they are assessed and levied by local authorities. More often still they are called "rates," and the term "taxes" is confined to imperial taxes. (See RATES.) Tithes (q.v.) are in the nature of local taxes, but are not usually so classified.

Imperial or parliamentary taxes include—customs, excise duties, stamp duties (including probate, legacy and succession duties), land tax, and income tax (see the various titles, also CONSOLIDATED FUND). As to "assessed taxes" (popularly called "King's taxes," to distinguish them from local taxes or rates, see EXCISE.

II. In procedure, taxation is the process of going through, and, if necessary, reducing, the bill of costs of an attorney or solicitor by a judicial officer. In the King's Bench and Chancery Divisions this process is performed by the Masters of the Supreme Court (q.v.) Taxing Office (Ord. 61, r. 1 (B)); in the Probate, Divorce and Admiralty Division, and in the Court of Bankruptcy and the County Courts, by the respective registrars.

Taxation is of two kinds, taxation in an action, matter or other judicial proceeding, and taxation under the Solicitors Act, 1843.

Taxation of the former kind takes place where costs are awarded to a party and made payable either—(i) by his opponent, or (ii) out of a trust fund or the estate of a deceased person, etc. In the former case, the taxation is optional, that is, the person who is ordered to pay the costs is entitled to have them taxed, but he may pay them without taxation if he likes: in the latter case, the taxation is generally compulsory, that is, the costs must be taxed for the protection of the persons interested in the fund or estate, unless they are all *sui juris* and dispense with taxation. Taxation of the latter kind appears to occur only in Chancery and Probate actions.

When a party has reason to complain of the manner in which the master (or other officer) has taxed the costs, he may carry in objections before the master (or other officer), showing the items objected to, and apply to the master to review his taxation (Ord. 65, r. 27 (39)). If the objecting party is dissatisfied with the decision of the master, he may apply to a judge at chambers for an order to review the taxation, and the judge then decides whether the objection is well founded (*ib.*, r. 27 (41)).

In the Chancery Division, when an interlocutory order directs the payment of costs by one party to another, the latter is entitled to have them taxed and paid at once. In the King's Bench Division, there is generally only one taxation of costs in an action, however many interlocutory applications there may have been; but this rule does not apply to orders of the Court of Appeal.

As to taxation between party and party, and between solicitor and client, see COSTS.

Taxation under the Solicitors Act, 1843, is the remedy for a person who is dissatisfied with a bill of costs rendered to him by his solicitor, whether for services in an action, etc., or in non-contentious business, such as conveyancing. The general rule is that a client can tax an unpaid bill only within a year after it has been delivered, unless there are special circumstances (s. 37), and that he cannot tax it after it has been paid, unless it was paid under pressure or under protest, etc., and in no case after a year from the payment (s. 41). On the other hand, a solicitor cannot commence an action for the recovery of costs until a month after he has delivered to the client a signed bill, that is, a bill signed by him or enclosed in or accompanied by a letter signed by him, and if the client applies for taxation the solicitor is restrained from commencing an action for his costs pending the taxation (s. 37).

See HIGHER AND LOWER SCALE.

The regulations applying to taxation generally are given in Ord. 65, r. 27.

Taxatores. See AFFEERORS.

Taxers. From the foundation of the University of Cambridge until well into the nineteenth century there were two university officers called taxers, who fixed the rents of students' lodgings and the prices of commodities, and kept the standards of weights and measures.

Taxing Officer. Each House of Parliament has a taxing officer, whose duty it is to tax the costs incurred by the promoters or opponents of private bills. See TAXATION.

Tea. The Sale of Tea Act, 1922, contains provisions to the effect that sales of tea, in quantities of or exceeding two ounces, shall be by net weight and in multiples of ounces or pounds.

Team; Theame. In the Anglo-Saxon period this meant the right to possess and exercise jurisdiction over bondsmen.

Teding Penny. See TITHING PENNY.

Telegraphs and Telephones. A telegraph means "a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe enclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication"

(Telegraph Act, 1863, s. 3), and "also any apparatus for transmitting messages or other communications by means of electric signals" (Telegraph Act, 1869, s. 3). It was held in 1880 that—as indeed is obvious—these definitions include the telephone. The Postmaster-General has the exclusive right of sending through his deputies messages by telegraph within the United Kingdom (Telegraph Act, 1869, s. 4) other than certain excepted messages (*ib.*, s. 5), of which the most important are messages sent over privately maintained telegraphs by the owners thereof upon their private business.

Wireless telegraphy, if electricity be employed, is clearly within the definition of a telegraph. It is distinguished from other forms of telegraphy by being carried on "without the aid of any wire connecting the points from and at which the messages or other communications are sent and received" (Wireless Telegraphy Act, 1904, s. 1 (7)); and no apparatus for wireless telegraphy may be installed or worked at any place in the British Isles (*ib.*, s. 3 (2)) or on any British ship without the licence of the Postmaster-General (*ib.*, s. 1 (1)).

As to malicious interference with telegraph poles, wires, etc., see the Malicious Damage Act, 1861, ss. 37, 38.

See WIRELESS TELEGRAPHY.

Tellers. In the Exchequer there were four "considerable officers" known as Tellers, who received all moneys due to the king. They, with the auditor (q.v.) and the Clerk of the Pells, were abolished by the statute 4 & 5 Will. 4, c. 15, s. 1.

Telligraph. This is derived from the Latin *tellus* (land) and *-graph*. It is of the same meaning as terrier (q.v.).

Temple. See INNS OF COURT; MASTER OF THE TEMPLE.

Temporalities of a bishop are all such things as he has by livery from the Crown, as castles, manors, lands, tenements, tithes, etc. During a vacancy of a bishopric the Crown has the custody of the temporalities, and (nominally) the rents and profits thereof. See GUARDIAN OF THE SPIRITUALITIES.

Temporary Estate Duty. This was a duty of 1 per cent. on any estate or succession exceeding £100, which was made payable, in addition to probate duty (q.v.) or succession duty (q.v.), by the Customs and Inland Revenue Act, 1889, ss. 5, 6, 7. The duty was not payable, in respect of any death after 1st August, 1894, upon property on which estate duty (q.v.) was payable (Finance Act, 1894, s. 1, Sch. I. (1)); and it therefore practically ceased when estate duty became payable, but, under the Revenue Act, 1889, it existed in theory until 1896.

Tempus est edax rerum (12 *Rep.* 5). (Time is a devourer of things.) And so "in the case of a charter of feoffment, if all the witnesses to the deed be dead . . . then violent presumption, which stands for a proof, is continual and quiet possession" (*Grounds of Law*, 320). Compare EX DIUTURNITATE, ETC.

Tenancy is the relation of a tenant to the land which he holds. Hence it signifies (1) the estate of a tenant, as in the expressions "joint tenancy," "tenancy in common"; (2) the term or interest of a tenant for years or at will, as when we say that a lessee must remove his fixtures during his tenancy. (See FIXTURES.) In old writers, "tenancy" sometimes denotes the land itself: "the tenant may plead that the tenancy is *extra feudum* of him"; this use of the word is obsolete. See TENANT; TENURE.

See AGRICULTURAL HOLDINGS ACTS.

Tenancy in Common, in the strict sense of the term, is where two or more persons are entitled to land in such a manner that they have an undivided possession but several freeholds: that is, no one of them is entitled to the exclusive possession of any particular part of the land, each being entitled to occupy the whole in common with the others, or to receive his share of the rents and profits; and on the death of any one of them his share passes, not to the survivors, but to his heir or devisee, who then becomes tenant in common with the survivors. Tenants in common may acquire land by several titles, or in several rights, or at different times, and hence the only characteristic common to joint tenants and tenants in common is that of undivided possession.

Persons may also be tenants in common of chattels real or personal, so that on the death of one of them his share passes to his personal representatives.

See COPARCENARY; JOINT TENANCY; ESTATE; PARTITION; PRESCRIPTION; SEVERALTY; UNITY OF POSSESSION.

Tenant. Strictly speaking, a tenant is a person who holds land; but the term is also applied by analogy to personalty: thus we speak of a person being tenant for life or tenant in common of stock.

In its proper use, "tenant" connotes either estate or tenure. Every person who has an estate in land is a tenant; thus, a person who has an estate in fee simple is a tenant in fee

simple, and a person who has an estate in joint tenancy is a joint tenant (see the following titles). Again, every tenant holds the land by tenure, "because," says Coke, "all the lands and tenements in England in the hands of subjects are holden mediately or immediately of the king. . . . And therefore the king in this sense cannot be said to be a tenant, because he hath no superior but God Almighty." (*Co. Litt.* 1A.) In this sense "tenant" is opposed to "lord" (q.v., and see TENURE).

In its more popular sense, "tenant" signifies a lessee of land or buildings for occupation, agriculture, etc. See LEASE; LANDLORD AND TENANT; TERM.

Tenant at Sufferance is a person who has originally come into possession of land by a lawful title, and holds such possession after his title has determined. "A tenant at sufferance," says Coke, "is he that at the first came in by lawfull demise, and after his estate ended continueth in possession and wrongfully holdeth over. As [where] tenant *pur terme d'auter vie* continueth in possession after the decease of *cestui que vie*, or [where] tenant for yeares holdeth over his terme." (*Co. Litt.* 57B.) A tenancy at sufferance is a chattel interest. See CHATTEL; ESTATE.

At common law, a tenant at sufferance is not a trespasser until the lessor or person entitled to the possession enters on the land, because his continuance in possession is imputed to the laches of the lessor in not entering at once (*Co. Litt.* 57B); but this doctrine has been modified by statute. See HOLDING OVER.

Tenant at Will, says Littleton, "is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called tenant at will, because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him." (*Litt.* § 68.) Similarly the tenant may leave when he likes. He has a right to emblements (q.v.), and to remove his goods, etc., if he is turned out by the landlord. He is liable for voluntary waste.

A tenancy at will may be created by parol (if followed by entry) or by deed. It may be determined not only by the will of either party, but also if the tenant should assign his estate to another, or if he should commit waste. As this kind of letting is very inconvenient to both parties, it is scarcely ever adopted; and in construction of law, a lease at an annual rent, made generally without expressly stating it to be at will, and without limiting any certain period, is not a lease at will, but a lease from year to year. See TENANCY FROM YEAR TO YEAR.

A tenancy at will is a chattel interest in land. See CHATTEL; ESTATE.

Copyholds were originally, and in theory still are, tenancies at will; but they are in fact no such thing. See COPYHOLD; SURRENDER.

Tenant by Copy of Court Roll (shortly, "tenant by copy") is the old-fashioned name for a copyholder. See COPYHOLDS.

Tenant by the Curtesy. See CURTESY.

Tenant for Life is a person who is entitled to land or tenements either for the term of his own life or for that of another person. In the latter case he is called tenant *pur autre vie*, and the person for whose life the land is holden is called the *cestui que vie*. See OCCUPANCY.

An estate for life may be created by deed of grant or feoffment, or by will. At the present day estates for life are principally created by settlements and wills: as where property is given to a man for his life, and after his death to his children. See ASSIGNMENT; HEIR; SURRENDER.

An ordinary tenant for life is not allowed to commit waste, but if his estate is given to him without impeachment of waste he may cut timber and open mines, etc., so long as he does not commit equitable waste. (See WASTE.) As to leases by tenants for life, see SETTLED LAND. See also EMBLEMENTS; IMPROVEMENT OF LAND ACTS.

Where a person has a life interest in a chattel (*e.g.*, in a sum of stock), he is sometimes called a tenant for life.

Tenant for Years. "Tenant for terme of yeares," says Littleton, "is where a man letteth lands or tenements to another for terme of certaine yeares, after the number of yeares that is accorded between the lessor and the lessee. And when the lessee entreth by force of the lease, then is he tenant for terme of yeares; and if the lessor in such case reserve to him a yearely rent upon such lease, he may chuse for to distraine for the rent in the tenements letten, or else he may have an action of debt for the arrerages against the lessee." (*Litt.* § 5B.) A tenant for years is liable for waste (q.v.).

The expression "tenant for years" is not much used at the present day. Where a term is created by an ordinary lease, the tenant is called lessee. As to his rights and liabilities, see LEASE; LANDLORD AND TENANT;

FIXTURES; INTERESSE TERMINI. If the term is one of those long terms created by settlements and the like, under which no rent, covenants, etc., are reserved, the tenant is called a "trustee of the term." See TERM.

Tenant from Year to Year is a tenant of land whose tenancy can only be determined by a notice to quit expiring at that period of the year at which it commenced. In the case of ordinary tenancies from year to year a six months' notice to quit is required. Thus, if a house is held on a tenancy from year to year, beginning at Midsummer, and either the landlord or the tenant wishes to determine it, he must, at or before Christmas, give notice to the other to quit at Midsummer following.

A tenancy from year to year of land subject to the provisions of the Agricultural Holdings Acts (q.v.) requires such notice to quit as is specified under NOTICE TO QUIT.

Whenever one person holds land of another, and there is no express limitation or agreement as to the term for which it is to be held, then, if the rent is payable with reference to divisions of the year (*e.g.*, quarterly), the tenancy is deemed to be a tenancy from year to year. See TENANT AT WILL.

Tenant in Fee. See FEE.

Tenant in Tail. See ESTATE TAIL.

Tenant in Tail after Possibility of Issue Extinct, says Littleton, "is where tenements are given to a man and his wife in especiall taile. If one of them die without issue, the survivor is tenant in taile after possibility of issue extinct," because there is no possibility of issue being born capable of inheriting the estate. And so if tenements are given to a man and the heirs of his body by his present wife, and the wife dies without issue, then the husband is tenant in tail after possibility of issue extinct, because no issue by another wife could inherit the estate tail. Such a tenant is, in effect, only a tenant for his own life, for he cannot bar the entail (Fines and Recoveries Act, 1833, s. 18); and on his death the estate will pass to the person next entitled in remainder or reversion. The tenancy has, however, some of the privileges of an estate tail, *e.g.*, the tenant is not punishable for waste. See ESTATE TAIL.

Tenant in Tail ex provisione viri. A woman was said to be tenant in tail *ex provisione viri* where she had an estate tail, either alone or jointly with her husband, in any lands or hereditaments inherited or purchased by her husband, or given to the husband and herself by any of the ancestors of the husband. Such a tenant in tail could not bar the entail after the death of the husband except with the consent of the issue in tail (statutes 11 Hen. 7, c. 20; 32 Hen. 8, c. 36). This kind of estate no longer exists: see s. 16 of the Fines and Recoveries Act, 1833.

Tenant-right.—I. In agricultural districts, tenant-right signifies the right of a tenant to claim a beneficial interest in the land, notwithstanding the expiration of his lease. In England, different usages have long prevailed in different counties and districts, conferring on an outgoing agricultural tenant a claim to remuneration for various operations of husbandry, from reaping the advantage of which he is prevented by the termination of his tenancy. Thus, by what is called the Lincolnshire tenant-right custom, if a tenant spreads chalk or bones upon the land, the money expended in this operation is divided by a certain number of years (three to seven); and if the tenant quits before the expiration of that period, he receives from the landlord a part of his outlay, proportionate to the number of years of the period remaining unexpired. (See CUSTOM.) Where this or any analogous custom exists, the tenant may claim under it instead of under the Agricultural Holdings Acts (see s. 1 (3) of the Agricultural Holdings Act, 1908), which entitle the tenant to compensation not only for chalking but for many other improvements. These Acts (q.v.) have established a statutory tenant-right generally.

II. Tenant-right estates are a peculiar kind of customary freeholds, found in the north of England. Although they appear to have many qualities and incidents which do not properly and ordinarily belong to villenage or copyhold tenure: and also to have originally had some which savoured more of military tenure by knight-service: and to want some of the characteristic qualities and circumstances which belong to copyhold tenure (namely, in not being holden at the will of the lord and in not being alienable by surrender and admittance): it seems to be settled that these customary tenant-right estates are not freehold, but copyhold. See CUSTOMARY FREEHOLDS.

Tenant to the Præcipe. Before the Fines and Recoveries Act, 1833, if land was conveyed to a person for life with remainder to another in tail, the tenant in tail in remainder was unable to bar the entail without the concurrence of the tenant for life, because a common recovery could be suffered only by the person seised of the land. In such a case, if the tenant for life wished to concur in barring the entail, he usually conveyed his life estate to some other person in order that the

præcipe in the recovery might be issued against the latter, who was therefore called the tenant to the præcipe. See PRÆCIPE; RECOVERY.

Tenants by the Verge. Such tenants "are in the same nature as tenants by copy of court roll [that is, copyholders]. But the reason why they be called tenants by the verge, is, for that when they will surrender their tenements into the hands of their lord to the use of another they shall have a little rod (by the custome) in their hand, the which they shall deliver to the steward or to the bailife . . . and the steward or bailife according to the custome shall deliver to him that taketh the land the same rod, or another rod, in the name of seisin; and for this cause they are called tenants by the verge, but they have no other evidence [title deed] but by copy of court roll." (*Litt.* § 78.) See SURRENDER.

Tenants Compensation Act, 1890. Provision is made by s. 2 of this Act for compensation for improvements by tenants where a mortgagee is in possession. This enactment (except in so far as relates to compensation under the Allotments and Cottage Gardens (Compensation) Act, 1887—see ALLOTMENTS), is repealed by s. 49, Sched. IV. of the Agricultural Holdings Act, 1908; but the latter Act (s. 12) proceeds to re-enact the section as regards holdings within the meaning of the Agricultural Holdings Acts.

Tender. A tender is an offer by a debtor to his creditor of the amount of the debt. The offer must be in money, which must be actually produced to the creditor, unless by words or acts he waives production: therefore, a mere statement by the debtor that he has the money in his possession ready for payment is not sufficient, even if the creditor says he will not receive it. But if the debtor brings the money in purses or bags, it is not necessary to show or count it, because, according to Coke, that is "the usuall manner to carry money in, and then it is the part of the party that is to receive it to put it out and tell it." The offer must also be unconditional. If the debtor requires a receipt, he must, if the amount is £2 or more, prepare and stamp it, and ask the creditor to sign it, and if the latter refuses to do so he is liable to a penalty under s. 102 (2) of the Stamp Act, 1891: but if the amount is under £2, the creditor is under no obligation to give a receipt. See RECEIPT.

If a debtor has made a tender, and continues ready to pay, he is exonerated from liability for the non-payment, but the debt is not discharged. Therefore if he is sued he should plead the tender, and also allege that he always was and still is ready to pay the debt, and he must pay the money into Court under Ord. 22, r. 3, or, in the County Court, under Ord. 9, r. 12 of the County Court Rules: if he can maintain the defence of tender and readiness to pay, he will be entitled to judgment for his costs.

Money is said to be legal tender when a creditor cannot refuse to accept it in payment of a debt. Coins issued by the Royal Mint for circulation in the United Kingdom are legal tender; gold coins up to any amount, silver up to £2, and bronze coins up to 1s. (Coinage Act, 1870, s. 4). Gold coins coined at certain colonial mints are also legal tender in this country. Notes of the Bank of England (q.v.) are legal tender: so also are Treasury notes (see CURRENCY NOTES).

The term "tender" is also applied to goods when they are offered to a person in performance of a contract for their delivery.

Tender of Issue. This was the equivalent, in the old common law practice, of what is now termed joinder of issue.

Tenel le Roy. Used in the statute 13 Rich. 2, c. 3, as meaning the abode for the time being of the king.

Tenement signifies a thing which is the subject of tenure (q.v.). The term, says Coke, "includeth not only all corporate inheritances [*i.e.*, corporeal hereditaments] which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning, or annexed to, or exercisible within the same, though they lie not in tenure . . . as rents, estovers, commons, or other profits whatsoever granted out of land; or uses, offices, dignities, which concerne lands or certain places . . . because all these savour of the recovery could be suffered only by the realtie." (*Co. Litt.* 19B, 20A.) But a personal hereditament, such as an annuity granted to a man and his heirs, is not a tenement. See HEREDITAMENT; ESTATE TAIL; LAND.

In popular language, "tenement" means a house. (See MESSUAGE.) And in modern statutes it sometimes has that meaning: see, for instance, the Towns Improvement Clauses Act, 1847, s. 167.

As to "dominant" and "servient" tenements, see EASEMENT.

Tenementary Lands. Spelman states that these were the outlying parts of manors granted by thanes in the Saxon period to tenants at arbitrary rents. They seem to have been farms let to tenants as distinguished

from what would now be called the home-farm.

Tenement Factory; Tenement Workshop. These expressions are defined in s. 149 of the Factory and Workshop Act, 1901.

Tenementis legatis. A writ which anciently lay for the determination of disputes as to wills of lands and tenements in the City of London and other corporate towns.

Tenendas. In ancient charters granting lands this was the clause (commencing with the words *tenendas prædictas*) which set out the tenure upon which the lands were to be held. It corresponded to the *tenendum* of a deed.

Tenendum. (Latin = "to be held.") In a deed of conveyance of land, the tenendum is the clause which formerly indicated the tenure by which the grantee was to hold the land of the grantor—"*tenendum de me et hæredibus meis sibi et hæredibus suis, per servitium,*" etc. When the statute *Quia Emptores* abolished subinfeudation, the clause was altered to indicate that the grantee was to hold of the superior lords—"*tenendum de capitalibus dominis;*" but now it simply says that the land is to be held by the grantee, without mentioning of whom. See TENURE; HABENDUM; QUIA EMPTORES.

Tenentibus in assisa non onerandis. The full title of this writ was "*Tenentibus in Assisa non onerandis de damnis quamdiu disseisitores habeant unde damna levari possunt,*" which indicates (as was the case) that where one had disseised another and then put a tenant into possession, the writ lay for the tenant in order to prevent his being sued by the person disseised as long as the disseisor had chattels upon which the person disseised could levy.

Ten Hours Act. The popular title of the statute 10 & 11 Vict. c. 29 (repealed and replaced by the later Factory Acts) which first regulated the hours during which women and children could be employed in factories.

Tenmanetale; Tenmentale. Stated in a law of Edward the Confessor to have been used in Yorkshire as meaning frithborg (q.v.), and also as meaning the tithing (q.v.). Used also in Northern England during the 12th and 13th centuries as an equivalent for carucage (q.v.).

Tenor; Tenour. The tenor of a document means, in ordinary conversation, its purport and effect, as opposed to the exact words of it. In law, the reverse is the case, and tenor means the exact words of the document.

As to an executor according to the tenor of the will, see EXECUTOR.

Tenores indictamenti mittendo. This was a writ by which an indictment was removed into the King's Bench from another Court. Compare CERTIORARI.

Tenor est pactio contra communem feudi naturam ac rationem in contractu interposita (*Wright, Ten.* (2nd ed.) 21). (Tenure is a compact contrary to the common nature of the fee, which is introduced into the contract [between the lord and his tenant].

Tenor est qui legem dat feudo (*Craig, Jus. Feud.* (3rd ed.) 66). (It is the tenor of the feudal grant which regulates it.) Compare CUJUS EST, ETC.; MODUS LEGEM, ETC.

Tentates panis. The assay (q.v.) of bread.

Tenterden's Act is the popular title of the Statute of Frauds Amendment Act, 1828. It is a supplement to the Statute of Frauds (q.v.) and requires the following promises and engagements to be in writing: (i) an acknowledgment of a debt barred by the Statute of Limitations; the Act further provides that an acknowledgment by one joint contractor shall not affect the others (see ACKNOWLEDGMENT; LIMITATION): (ii) a promise to pay a debt incurred, or a ratification of a contract made, during infancy (see INFANT): (iii) a representation as to a person's character, ability, etc., made to enable him to obtain money or goods upon credit: (iv) executory contracts for the sale of goods, as to which see STATUTE OF FRAUDS.

Tenths are the tenth part of the annual profit of an ecclesiastical benefice according to the valuation contained in the *Valor beneficiorum* or King's Books, compiled in Henry VIII.'s reign. As to the origin of tenths, see FIRST FRUITS AND TENTHS, COURT OF: as to their present application, see QUEEN ANNE'S BOUNTY. By Order in Council made 27th November, 1852, pursuant to Queen Anne's Bounty Act, 1858, s. 19, tenths were commuted for an annual payment of 17s. 6d. on each £100 of the clear annual value of a living. Benefices of a clear annual value not exceeding £50 had been freed from tenths by the statute 7 Eliz. c. 4 and subsequent Acts.

Ecclesiastical tenths must not be confounded with the tax consisting of one-tenth of every man's whole personal property, formerly levied by the Crown under the name of tenths. As in the case of fifteenths (q.v.) the amount payable was fixed in the reign of Edward III.: so that when this tax disappeared in the reign of James I. it was not anything like a tenth of the national personalty.

Tenure.—I. Tenure in its general sense is a mode of holding or occupying: thus we speak of the tenure of an office, meaning the manner

in which it is held, especially with regard to time (tenure for life, tenure during good behaviour), and of tenure of land in the sense of occupation or tenancy, especially with reference to cultivation and questions of political economy, *e.g.*, tenure by peasant proprietors, cottiers, etc.

II. In its more technical sense, tenure signifies the mode in which all land in England is theoretically owned and occupied. The rule is that no person except the king can be the absolute owner of land in England, because all lands in the hands of subjects are held of some superior, and mediately or immediately of the Crown; that is, every person who is possessed of land is theoretically merely a tenant and owes obligations in respect of it either to the Crown or to an intermediate lord. The manner of his possession is called tenure, and the extent of his interest is called an estate (q.v.). The rule is a relic of the feudal system, and can only be understood with reference to it; in practice it has but little effect except in respect of manors and copyhold land, an ordinary tenant in fee simple of freehold land being to all intents and purposes absolute owner. See FEUDAL SYSTEM; ESCHEAT; COPYHOLD; LORD; TENANT; TENEMENT; FEALTY; HOMAGE; SERVICE; MANOR.

A. With reference to the relation between the lord and the tenant, a tenure is either perfect or imperfect. A perfect tenure is where one person holds land of another, or of the Crown, in fee simple, and this is accordingly subdivided into (a) tenure *in capite* or in chief, which is the tenure existing between the Crown and those who hold land of it directly; and (b) mesne tenure, which is where one subject holds land of another. (See MESNE.) When land is held of a private person merely by reason of his having the seignory of that particular land, the tenure is technically called a tenure in gross, as opposed to the case of land being held of a person in his capacity of owner of a manor, county-palatine or the like. Imperfect tenure is that which exists between a tenant of land and a person to whom he has granted a smaller estate than his own, as where a tenant in fee simple creates an estate in tail or for years. An imperfect tenure may be created by anyone at the present day, while a perfect tenure can now only be created by the Crown. See SUBINFEUDATION.

B. With reference to the services to which they give rise, tenures are of various kinds. See SERVICE.

1. Temporal or lay tenures are those by which land is or used to be held by secular persons. They are of two kinds according as their services were originally free or base. (A) To the former class (frank or freehold tenure) belong (a) knight's service with its varieties (grand serjeanty, escuage, castle ward and cornage, which are commonly called feudal tenures par excellence, and have all been abolished by being converted into common socage), and (b) free socage with its varieties (petty serjeanty, burgage tenure, borough-English and gavelkind). (B) Base or villein tenures are (a) pure villenage, which no longer exists, except in the form of copyhold and customary freehold tenures; and (b) the obsolete privileged villenage or villein socage, from which is derived tenure in ancient demesne. (See the various titles; also TENANT-RIGHT.) Copyhold, ancient demesne and customary freehold are sometimes called customary tenures, because they depend on local custom, and not on the general law.

2. Ecclesiastical or spiritual tenures are: tenure in frankalmoign, and tenure by divine service (q.v.).

Tenure by Divine Service is where an ecclesiastical corporation, sole or aggregate, holds land by a certain divine service, as to say prayers on a certain day in every year, "or," in the case mentioned at *Litt.* § 137, "to distribute in almes to an hundred poore men an hundred pence at such a day." It was originally called tenure in alms, as distinguished from tenure in free alms (frankalmoign). It differs from frankalmoign in the service being certain, in consequence of which the lord may distrain if the service is not performed. Fealty is also due by the tenant. See FRANKALMOIGN; SERVICE; TENURE.

Term.—I. In the law of real property, a term of years is where a man lets lands or tenements to another for a certain number of years, as in the case of an ordinary lease for seven years; the word "term" not only signifies the limit of time, but also the estate and interest that pass for that time, so that if a lease is surrendered before the expiration of the time, the term is at an end. A tenant for term of years is called in the old books a termor.

A term is personal property (see CHATTELS; ESTATE; SURVIVORSHIP), except in the respects mentioned in the title LEASEHOLDS.

In practice, the word "term" is seldom applied to a term of years granted for the purpose of occupation by the termor, such a term being described as a lease (q.v.), while "term" generally signifies a long term of

years granted, not for the purpose of occupation by the grantee, but as security for the performance of an obligation, such as the payment of money. For this purpose it is often more convenient to limit a long term to the person in whose favour the obligation is created, and to allow the ownership of the property, subject to the term, to remain in the person entitled to the enjoyment of it, than to transfer the whole ownership as security, as in the case of a mortgage (q.v.). Thus, when land is settled on the marriage of the owner, it is usual to provide for the payment of a jointure to the wife, and of portions for the younger children, without interfering with the possession of the estate by the husband. This is done by vesting long terms of years (from 99 to 1,000) in trustees, upon trust, out of the rents and profits of the estate, or by sale or mortgage thereof for the whole or any part of the term, to raise the money required, and upon trust to permit the tenant for life to receive the residue of the rents and profits. In practice, however, the power thus created of receiving the rents directly from the tenants, or of selling or mortgaging the term, is rarely exercised, except for raising gross sums (*e.g.*, portions), as it is to the advantage of the tenant for life to keep down the annuities so that he may not be disturbed in the possession of the land. Terms created in this manner are called pin-money-terms, jointure-terms, portions-terms, etc., according to the purposes for which they are created. See SETTLEMENT.

When the purpose for which a term has been created is accomplished, the term is said to be satisfied. See CESSOR.

Formerly, when a term had become satisfied, it was usual in some cases to keep it on foot "in trust to attend the inheritance," as it was expressed. Thus, if property subject to a long term was sold, so that the powers of raising portions, etc., out of the land were no longer exercisable, the purchaser often preferred to keep the term on foot, because it protected him from any unknown incumbrances on the freehold created by the former owner since the commencement of the term, such incumbrances being postponed until the expiration of the term. The purchaser, therefore, would have the term assigned to a trustee in trust for him, his heirs and assigns, and to attend the inheritance. Such a term was called an attendant term, while an ordinary term was called a term in gross. Now, by the Satisfied Terms Act, 1845, every term becoming attendant upon the inheritance of land immediately ceases and determines; but the protection afforded by attendant terms existing before the Act is preserved.

By the Conveyancing Act, 1881, s. 65, where a residue unexpired of not less than 200 years of a term which, as originally created, was for not less than 300 years, is subsisting in land, without any trust or right of redemption affecting the term in favour of the freeholder or reversioner, and without any rent having a money value, then (i) any person beneficially entitled, in right of the term, to possession of any land comprised in the term, or (ii) any person who is in receipt of the income of the land in right of the term, or in whom the term is vested in trust for sale, or (iii) any person in whom the term is vested as personal representative of any deceased person, may by deed declare that the term shall be enlarged into a fee simple. Thereupon the term is enlarged accordingly, and the person in whom the term was vested acquires the fee simple, subject to the same trusts, powers, rights, obligations, etc., as the term would have been subject to. Numerous instances had occurred in practice in which estates really held merely for the residue of long terms were practically treated as freehold. This section enabled such terms, when the residue was not less than 200 years and the original term had been not less than 300 years, to be enlarged into a fee simple. It does not (Conveyancing Act, 1882, s. 11) apply to any term liable to be determined by re-entry for condition broken, or to any term created by sub-demise out of a superior term which is itself incapable of being enlarged.

II. "Term" also signifies a portion of the year during which alone, according to the former practice of the Courts, judicial business could be transacted By modern statutes, however, a considerable part of the intervening vacations was made available for the sittings of the Courts and other business; and by the Judicature Acts, 1873, 1875, the division of the year into terms was abolished, so far as relates to the administration of justice, the year being now divided into sittings and vacations (q.v.); but the terms still exist for some purposes, *e.g.*, in computing the period required for a call to the bar by the Inns of Court. The terms for judicial business were—(1) Hilary, from 11th to 31st January; (2) Easter, from 15th April to 8th May; (3) Trinity, from 22nd May to 12th June; and (4) Michaelmas, from 2nd to 25th November: the modern terms are—(1) Hilary, for the twenty-one days commencing

11th January; (2) Easter, for the twenty-eight days commencing the second Tuesday after Easter Sunday; (3) Trinity, for the twenty-one days commencing the second Tuesday after Whit Sunday; and (4) Michaelmas, for the twenty-four days commencing 2nd November.

III. In ecclesiastical procedure, term signifies a period. Thus, a term probatory is the time assigned by the Court for the examination of witnesses.

Termes de la Ley. The title of a book (first published in 1624) which was founded upon the work published in 1567 as "*An Exposition of Certaine Difficult and Obscure Wordes and Termes of the Law.*" This "Exposition" was a translation by William Rastell (a justice of the Queen's Bench, 1558-1563) of the "*Expositiones Terminorum Legum Anglorum,*" published in 1527 by his father, John Rastell, a member of Lincoln's Inn and also a printer.

Terminal Charges. These are the charges at each end of a journey—such as those for collecting, loading, unloading and delivery—which a railway company is generally authorised to make over and above the maximum charge which they are authorised to make for the actual conveyance of goods.

Terminus ad quem. The finishing point..

Terminus annorum certus debet esse et determinatus (*Co. Litt.* 45). (A term of years ought to be certain and determinate.) And so a lease of glebe lands by the incumbent for as many years as he shall be parson is not a lease for a term of years; for no one can foretell the date on which his incumbency will be terminated by death or otherwise.

Terminus a quo. The starting point.

Terminus et feodum non possunt constare simul in una et eadem persona (*Grounds of Law*, 321). (The term and the fee cannot simultaneously exist in full force in one and the same person.) This is a condensed version of a quotation from Bracton at p. 29 of *Plowden's Commentaries*. See MERGER.

Term of Years; Termor. See TERM.

Terra extenuenda. A writ which anciently lay to an escheator commanding him to enquire as to the annual value of the lands of one whose lands had been forfeited to the king.

Terre-tenant or **Ter-tenant,** which in Norman French literally means "land-holder," is used in the old books to signify a person who has the seisin of land, as opposed either (i) to the lord of whom he holds it, and who merely has a seignory (q.v.), or (ii) to a person to whose use he was seised of the land, before the Statute of Uses. Thus, if before the Statute of Uses, A conveyed land by feoffment to B and his heirs, to the use of C and his heirs, B was called the terre-tenant or feoffee to uses, and C was called the *cestui que use.* (See USE.) The word is now obsolete. In the law of execution a "terre-tenant" is an owner in fee of land which he has acquired from a defendant, who has suffered judgment. Formerly every judgment charged the land of the defendant, and if he died after judgment, execution might be issued against his heirs and terre-tenants. See JUDGMENT.

See LAND TENANT.

Terriers. A register or survey of lands setting out the tenures and boundaries. Terriers of the church lands in every parish have from time to time been made pursuant to Canon 87 of 1603. When coming from proper custody—such as the registry of the bishop or the archdeacon, or the chest in the parish church—they are evidence of the facts properly stated in them.

Telligraph (q.v) is an early synonym.

Terris, bonis et catallis rehabendis post purgationem. Anciently, when a clerk, who had been charged before the King's justices with a felony, had, at the request of his bishop, been handed over to an ecclesiastical Court and had been acquitted by that Court, this writ lay for him to "get back his lands, goods and chattels after his acquittal."

Terris, catallis et tenementis ultra debitum levatum. A writ which anciently lay for one whose lands, chattels and tenements had been distrained for more than the amount due by him.

Terris liberandis. A writ which anciently lay for one against whom there had been successful proceedings by attaint (q.v.): it enabled him to have a fine substituted for the various punishments to which he had become liable. A different writ of the same name was for the delivery of lands to an heir after homage and relief had been performed.

Territorial; Territoriality. These terms are used to signify connection with, or limitation with reference to, a particular country or territory. Thus, "territorial law" is the correct expression for the law of a particular country or state (*e.g.*, England), although "municipal law" is more common (see LAW). "Territorial waters" are that part of the sea adjacent to the coast of a given country which is by international law deemed to be within the sovereignty of that country, so that its Courts have jurisdiction over offences committed on those waters, even by

a person on board a foreign ship. The ordinary limits of territorial waters are a distance of one marine league from low-water mark. See HIGH SEAS; KING'S CHAMBERS.

As to territorial jurisdiction, see JURISDICTION: see also EXTRA-TERRITORIALITY.

Territorial Army. The Crown is empowered by the Territorial and Reserve Forces Act, 1907, s. 6, to raise and maintain a force to be called the Territorial Force, the strength of which to be as Parliament may fix from time to time. Enlistment is for a term of not exceeding four years, with a possible re-engagement for a like period, subject, as regards the entire period of service, to the right of discharge on giving three months' notice and making certain payments (s. 9). Every man must undergo such preliminary training as is required by s. 14 (1) and such subsequent annual training as is prescribed by s. 15 (1) of the Act. The force may be called out whenever the Army Reserve (q.v.) is called out (s. 17 (1)). Officers of the force at all times (Army Act, s. 50; Army (Annual) Act, 1919, s. 15) and non-commissioned officers and men when serving (Army Act, s. 176 (6) (b); Territorial Force Reg., 1912, par. 214) are subject to military law.

The Territorial Force has since 1st October, 1921, been called the Territorial Army (Territorial Army and Militia Act, 1921, ss. 1, 5 (2)).

See VOLUNTEERS; YEOMANRY; COUNTY ASSOCIATIONS.

Territorial Waters. See TERRITORIAL.

Test Act. The popular title of the statute 25 Car. 2, c. 2. (See RECUSANTS). After various mitigations, of which the most important was that contained in the Roman Catholic Relief Act, 1829, the Test Act was finally repealed in 1863.

Testable. Anyone is said to be testable when he has capacity to make a will. Anyone over twenty years of age and of sound mind is testable. The capacity to make a will must be distinguished from a special power to dispose of property by will. Thus a power given to a married woman by a settlement to dispose of property by will did not make her testable; before the Married Women's Property Acts (q.v.) she was testable only as regards property settled on her for her separate use. Under the Wills Act, 1837, s. 11, as amended and extended by the Wills (Soldiers and Sailors) Act, 1918, anyone authorised by those Acts to make a will otherwise than in accordance with requirements of the Act of 1837 as to wills generally, is testable even though not twenty-one years of age. He is in fact testable, under the law before 1837, at the age of fourteen.

Testa de Nevill (Liber fœdorum). A register, consisting of two volumes, containing transcripts of inquisitions (as to knights' fees, sergeanties, fees held in frankalmoyn, escheats, etc.) made between 1190 and 1250). It appears to derive its name either from Jollan de Nevill, one of the justices *in eyre* who died in 1246, or from Ralph de Nevill, who was Accountant of the Exchequer and Collector of Aids about the same time. The original Testa has disappeared; but a copy of a portion was made in the fourteenth century and after being for long in the chapter-house of Westminster, is now in the Public Record Office. It was printed in 1807 by the Record Commissioners.

Testament is, strictly speaking, a will of personal property: a will of land is not called a testament. The word "testament" is now seldom used, except in the heading of a formal will, which usually begins—"This is the last will and testament of me, A. B., etc."

Coke's derivation (*testatio mentis*) is of course erroneous: the word is derived from *testatum* (a declaration).

Testamenta latissimam interpretationem habere debent (*Jenk. Cent.* 81). (Wills ought to have the broadest interpretation.) Compare ULTIMA VOLUNTAS; ETC.

Testamentary. "Testamentary power" is the power of making a valid will, either generally, or with reference to particular kinds or dispositions of property. "Testamentary capacity" usually refers to the absence of some disability which prevents a person from making a valid will: thus, infants and lunatics have not testamentary capacity.

A paper, instrument, document, gift, appointment, etc., is said to be testamentary when it is written or made so as not to take effect until after the death of the person making it, and to be revocable and retain the property under his control during his life, although he may have believed that it would operate as an instrument of a different character. Thus, deeds of gift, marriage settlements, letters, etc., when executed with the formalities of a will, have been admitted to probate as testamentary instruments. The term "testamentary documents" of course includes wills and codicils, which are in form as well as in effect testamentary. See SCRIPT.

As to testamentary guardians, see GUARDIAN.

Testate. A person is said to die testate when he leaves a will. See INTESTATE.

Testator is a person who makes a will.

Testatum. The part of an indenture beginning with the words "Now this indenture witnesseth": it is also known as the witnessing clause.

Testatum Writ. Formerly a writ of execution could not be issued into a county different from that in which the venue in the action was laid, without first issuing a writ called a "ground writ" into the latter county, and then another writ, which was called a *testatum* writ, into the former. This was abolished in ordinary cases by the Common Law Procedure Act, 1852, s. 121. Now a *testatum* writ means merely a writ which is issued into a county other than that in which the venue was laid.

A *testatum* writ in the old sense seems to be still necessary when a *fieri facias de bonis ecclesiasticis* has been issued into one diocese, but the entire debt is not levied on it, and the plaintiff wishes to have the residue levied from the defendant's ecclesiastical goods and chattels in another diocese.

Teste is the concluding part of a writ, giving the date and place of its issue. It is so called because it begins with the words "Witness ourself" (in Latin, *Teste meipso*), or similar words. Every writ of summons and other writ issued in the High Court of Justice is tested (that is, the teste runs) in the name of the Lord Chancellor, or, if the office be vacant, in that of the Lord Chief Justice (Ord. 2, r. 8) unless it be the practically obsolete *mittimus*, which is tested by the Master of the Rolls in the name of the King.

Testibus deponentibus in pari numero dignioribus est credendum (4 *Inst.* 279). (Where the number of witnesses is equal on both sides, the more worthy are to be believed.) This related even in the time of Coke more to the old system of compurgation than to the contemporary law.

Testimony is the evidence of a witness given *vivâ voce* in a Court of justice or other tribunal. (See EVIDENCE.) In the old books, such as *Coke*, "testimony" means "witness."

Testmoignes ne poent testifie le negative, mes l'affirmative (4 *Inst.* 279). (Witnesses cannot prove a negative, but an affirmative.) If a man is charged with being drunk, the evidence of witnesses who can prove merely that they have never seen him drunk is inadmissible.

Testoon. See SILVER COINS.

Textile Factory. Defined in s. 149 of the Factory and Workshop Act, 1901.

Thalweg. A German word meaning the *medium filum* of a river. See AD MEDIUM FILUM.

Thames Conservancy. See CONSERVATORS OF RIVERS.

Thanksgiving, Public, Day of. Such a day may be fixed by Royal Proclamation. (See FASTS.) When the last of the days of grace for a bill of exchange falls on any such day—or on a day of public fast—the bill is payable on the preceding business day (Bills of Exchange Act, 1882, s. 14 (1) (a)).

Thavies' Inn. See INNS OF CHANCERY.

Theame. See TEAM.

Theatre. This means "any house or other place of public resort in Great Britain for the public performance of stage plays" (Theatres Act, 1843, s. 2); and "stage play" means any "tragedy, comedy, farce, opera, burletta interlude, melodrama, pantomime, or other entertainment of the stage or any part thereof" (*ib.*, s. 23), unless performed by leave of the proper authority in a booth, etc., at any fair, etc. (*ib.*)

No theatre can be conducted except (1) under letters patent, (2) under licence from the Lord Chamberlain, or (3) under licence from the county council.

Letters patent are granted under the royal prerogative. The only theatre now possessing letters patent is Covent Garden Opera House, London.

The Lord Chamberlain is the licensing authority for the Cities of London and Westminster, and for the Boroughs of Finsbury, Marylebone, the Tower Hamlets, Lambeth, Southwark, New Windsor, and Brighthelmstone (Brighton) as existing for parliamentary purposes in 1843 (Theatres Act, 1843, s. 3). Elsewhere the licensing authority is the County Council (*ib.* s. 5; Local Government Act, 1888, s. 7); but a licence for a theatre in or within fourteen miles of the City of Oxford or the town of Cambridge can be granted only with the consent of the Chancellor or Vice-Chancellor of the Universities of Oxford and Cambridge respectively and may be annulled by such Chancellor or Vice-Chancellor if the theatre be conducted in contravention of rules approved by them respectively (Theatres Act, 1843, s. 10).

See STAGE PLAY.

Theft is larceny (q.v.) or the act of stealing. The word is, however, never used in English law, which is conversant only with "larceny."

Theftbote. Hush-money (q.v.) for larceny.

The word is found in the *Statutum Walliæ* (12 Edw. 1, c. 4) and in *Britton*; in both cases theftbote is mentioned as being illegal.

Thellusson Act. See ACCUMULATION.

Thelonium. Toll (q.v.). The *Breve essendi quieti de thelonio* (writ to establish freedom from toll) anciently lay for burgesses of a town exempt by charter from toll, for lords in ancient demesne who were exempt from toll, for ecclesiastical persons as regards toll on ecclesiastical goods, for merchant strangers as regards tolls from which they were exempted by charter, etc. There was also the writ *De thelonio rationabili habendo*, which lay for one holding of the king in fee to recover tolls from those holding under him.

Themmagium. Stated to have been a commutation paid by bondsmen to one possessing TEAM (q.v.)

Theoden. Stated by Spelman to have meant a husbandman in Anglo-Saxon times.

Thereabouts. See MORE OR LESS.

Thereupon. Where a statute directs that a person "shall thereupon" do so and so, this means "shall immediately."

Therm. A British thermal unit is the amount of heat required to raise one pound of water one degree Farenheit. For the purposes of the Gas Regulation Act, 1920, 100,000 thermal units are a therm (s. 1 (3)); the Board of Trade can make orders permitting undertakers (see GAS) to sell gas at such and such a maximum or standard rate per therm (s. 1 (2)); and sale by therm is illegal in the absence of an order (s. 3). Applications for such orders are regulated by S. R. & O., 1920, No. 1826.

Thesaurus inventus est vetus dispositio pecuniæ, etc., cujus non extat modo memoria, adeo ut jam dominum non habeat (3 *Inst.* 132.) (Treasure-trove is an ancient hiding of money, etc., of which no recollection exists, so that it has now no owner.)

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum (3 *Inst.* 132.) (Treasure does not belong to the king, unless no one knows who hid it.)

Thirdborrow. This word, which was derived from the name of the head man in a frank-pledge, was formerly used as meaning a conservator of the peace in a borough or manor.

Third Night Awne-Hinde. In Saxon times this was a man who stayed for a third night in the house of another. The host was responsible for offences committed by him. Compare TWA-NIGHT GESTE.

Third Party. "Third party" is a colloquial and not very logical phrase, signifying a person who is a stranger to a transaction or proceeding; in other words, someone who is not a party at all. (See STRANGER.) It is chiefly used in the expressions "notice to third party," (as to which see CITATION), and "third party risk policy," that is to say, a policy of insurance which protects the person taking it out against liability in respect of injury caused by him or his servants to the property or persons of third parties.

Thirty-nine Articles. See ARTICLES, THE THIRTY-NINE.

Thistle, Order of. The Most Ancient and Most Noble Order of the Thistle was founded in 1687. The Knights (K.T.) are the Sovereign, certain Royal Princes, and peers having property in or being otherwise specially connected with Scotland.

Threats. In criminal law, the sending of a letter threatening to kill or murder a person (Offences against the Person Act, 1861, s. 16), or to commit arson, or to injure cattle (Malicious Damage Act, 1861, s. 50), is a felony punishable with ten years' penal servitude (maximum). (See also BLACKMAIL; MENACES.) Threats of personal injury, etc., are a ground for exhibiting Articles of the Peace (q.v.).

Ticket of Leave. The colloquial name of the "licence to be at large," which the Home Secretary may at any time grant, upon such condition as he may think fit and with power of revocation, to anyone undergoing penal servitude (Penal Servitude Act, 1853, s. 9). The conditions usually imposed are those specified in the Penal Servitude Act, 1864, s. 10, Sch. A.: they are merely such as are calculated to make the released convict lead a useful and honest life. Property acquired by the convict while on licence does not vest in the administrator, if any, appointed by the Crown (see ADMINISTRATION) to manage his property (Forfeiture Act, 1870, s. 30); and he can sue or contract like any ordinary person (*ib.*, s. 8). He must keep the police informed of his residence for the time being (Prevention of Crimes Act, 1871, ss. 5, 8; Penal Servitude Act, 1891, s. 4); but even this condition is not onerous, as it may be complied with through the post.

A well conducted convict can obtain a ticket of leave when he has served three-fourths of his sentence (Rules for Convict Prisons, s. 33). In cases of penal servitude for life the question of a ticket of leave is specially considered after twenty years (*ib.*).

See PENAL SERVITUDE.

Tidal Rivers. See NAVIGATION; RIVERS.

Tidal Water. Defined, for the purpose of

the Merchant Shipping Act, 1894, in s. 742 of that Act.

Tidesman; Tidewaiter. A Customs' officer who, as ships came into port with the tide (as they generally did before the dredging of ports and the advent of steam) was placed on board to enforce the Customs regulations. Compare LANDWAITER.

Tide Surveyor; Tide Supervisor. The tide surveyors used formerly to supervise the tide-waiters, and the tide supervisors supervised the tide surveyors.

Timber. Timber, strictly speaking, includes only oak, ash and elm; but, according to *Co. Litt.* 53A, "in places where timber is scant, and beeches or the like are converted to building for the habitation of man, or the like, they are all accounted timber." All trees used for what is popularly known as "timber" are now included.

Timber and other trees form part of the land, and on the death of the owner intestate they pass with it to the heir, therein differing from growing crops. Timber when severed is personal estate.

Cutting down timber is a form of waste (q.v.), except so far as it is required for estovers (q.v.). If a tenant without impeachment of waste cuts timber in a husbandlike manner it vests in him; otherwise, if timber is cut or blown down, it belongs to the tenant in fee. Under the Settled Estates Act, 1877, s. 16, timber generally (other than ornamental timber) may be sold by order of the Court; and where timber is ripe for cutting a tenant for life impeachable for waste may sell with the consent of the trustees or of the Court, and retain one-fourth of the proceeds for himself (Settled Land Act, 1882, s. 35).

Where a person takes by succession land with timber or other trees, not being coppice or underwood, he must pay succession duty on all sums (exceeding £10 in any one year) from time to time received from any sales of such timber, unless he commutes the duty (Succession Duty Act, 1853, s. 23), and if the timber be on land in respect of which estate duty is payable on the death of a person dying after 29th April, 1910, estate duty at the rate appropriate to the total value of the estate is payable on the timber as it is sold (Finance (1909-10) Act, 1910, s. 61 (5)).

See SUCCESSION; SUCCESSION DUTY; ESTATE DUTY.

Timberlode. A service due by tenants to a lord. It consisted in carrying to the lord's house timber felled in his woods.

Time. As to the meanings of the expressions day, month, year, etc., when used in statutes or legal instruments, see the respective titles. By the Definition of Times Act, 1880 (as amended by the Time (Ireland) Act, 1916), whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred to shall, unless otherwise specifically stated, be held to be Greenwich mean time.

The Courts take judicial notice of the calendar, as settled by the statute 24 Geo. 2, c. 23. See CALENDAR; NOTICE.

As to time being of the essence of a contract, see ESSENCE OF THE CONTRACT.

See SUMMER TIME.

Time-bargains. See WAGER.

Time out of Mind. See MEMORY.

Time Policy. See POLICY OF ASSURANCE; CONTINUATION CLAUSE.

Tinbounding is a custom regulating the manner in which tin is obtained from waste land, or land which has formerly been waste land, within certain districts in Cornwall and Devon. The custom is described as follows by an authority on the subject:—"Any person may enter on the waste land of another, and may mark out by four corner boundaries a certain area; a written description of the plot of land so marked out with metes and bounds, and the name of the person, is recorded in the local Stannaries Court, and is proclaimed on three successive court-days. If no objection is sustained by any other person, the Court awards a writ to the bailiff to deliver possession of the said 'bounds of tin-work' to the 'bounder,' who thereupon has the exclusive right to search for, dig, and take for his own use all tin and tin-ore within the enclosed limits, paying as a royalty to the owner of the waste a certain proportion of the produce under the name of toll-tin." (*Bainbridge on Mines* (4th ed.), p. 146). The County Court was substituted in 1897 for the Stannaries (q.v.) Court. The right of tin-bounding is not a right of common (see COMMON), but is an interest in land, and, in Devonshire, a corporeal hereditament. In Cornwall tin bounds are personal estate. See FOREST OF DEAN; STANNARIES.

Tin Coinage. See COPPER COINAGE.

Tinet. Used in a charter of Henry VI. as meaning brushwood, etc., for making up fences.

Tinkerman. A misprint for trinkerman: see TRINK.

Tippling Act. The popular title of the Sales of Spirits Act, 1850, which (s. 12), as amended by the Sale of Spirits Act, 1862, provides

that no proceedings can be taken for the recovery of sums under 20s. due for spirituous liquor unless delivered at the purchaser's residence in quantities of not less than one reputed quart. By the County Courts Act, 1888, s. 182, no proceedings can be taken in the County Court in respect of beer, ale, porter, cider or perry, consumed on the premises, where such beer, etc., was supplied.

Tipstaff. Tipstaves are officers, in the nature of constables, attached to the Supreme Court. They were originally appointed for the Court of King's Bench by the Marshal of the King's Bench Prison, and for the Courts of Chancery, Common pleas and Exchequer by the Warden of the Fleet Prison (Queen's Prison Act, 1842, s. 5); but in 1842 the functions, in this respect, of those officials were transferred to the Lord Chief Justice (of the Queen's Bench as he then was) and to the Lord Chancellor, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer (*ib.*). The appointment now lies with the Lord Chancellor and the Lord Chief Justice. Since the abolition of imprisonment on mesne process, the functions of the tipstaves have been confined to arresting persons guilty of contempt of Court, except in the King's Bench Division, where the tipstaff also has in theory charge of any prisoner brought before the Court, or committed by the Court, in the exercise of its criminal jurisdiction. Writs of attachment are executed by the sheriff: and the tipstaff never in fact acts unless the offender is actually in Court.

Tithe Commissioners. A body created by the Tithe Act, 1836, s. 2. See COPYHOLD COMMISSIONERS.

Tithe-hay. See MEAD-SILVER.

Tithe Rentcharge. See TITHES.

Tithes are payments due by the inhabitants of a parish for the support of the parish church, and generally payable to the parson of the parish. In extra-parochial places the King is entitled to the tithes. Tithes payable to a rector are called rectorial tithes, those payable to a vicar are vicarial tithes, and those payable to a lay person are lay tithes; the last belong to the class of incorporeal hereditaments. As to exemptions from tithes, see DE NON DECIMANDO; MODUS; REAL COMPOSITION.

Originally tithes were paid in kind, and consisted of the tenth part of all yearly or periodical profits of certain descriptions, tithes being divisible into prædial, mixed and personal. Prædial tithes (so called from Latin *prædium*, a farm) were profits arising immediately from the soil, *e.g.*, corn, grass, etc.; mixed tithes were those arising from animals deriving their nutriment from the soil, *e.g.*, tithes of wool, milk, etc.; personal tithes are those arising entirely from the personal industry of man; these last exist only in a few instances, as in the case of fish caught in the sea, or, by special custom, for fish caught in rivers. Tithes payable in respect of corn-mills were personal tithes, but they have been commuted (*infra*). Tithes of mineral may also be payable by custom.

Tithes were also divided into (a) great tithes, comprehending the tithes of corn, peas, beans, hay and wood, and (b) small (or privy) tithes, which included all other kinds of tithes. The distinction is important, because vicars are frequently endowed with small tithes only.

Tithes have now ceased to be paid in kind, except in a very few instances, for by a series of voluntary agreements and compulsory awards made under the Tithe Acts, 1836 to 1891, a rent-charge varying with the price of corn has been substituted for almost all tithes, whether payable in kind or under a modus or composition. (See RENT.) Mineral tithes, tithes of fish and other personal tithes (except mill-tithes) are not liable to compulsory commutation (Tithe Act, 1836, s. 90).

Tithe rentcharges do not merge in the lands out of which they are payable by mere unity of ownership; but the owner may by deed or declaration approved by the Ministry of Agriculture and Fisheries, cause a merger to take place.

Under the Tithe Act, 1891, s. 1, tithe rentcharge is payable by the owner of the land; any contract made after 26th March, 1891, for payment by the occupier is void; any such contract existing on that date ceased to be binding on the occupier, who, however, became liable to repay to the owner the amount of any tithe rentcharge which previously had been paid by the occupier, and which then became payable by the owner—such amount to be recoverable by distress only. The same Act, by s. 2, provides that unpaid tithe rentcharge can be recovered, in the case of land occupied by a tenant, only by receiver proceedings in the County Court, and, in the case of land occupied by the owner, by distress made by an officer of that Court. Before then, distress had applied in the case of any land out of which tithe rentcharge was overdue.

Neither tithe nor tithe rent-charge is recoverable unless distress be levied or proceedings taken within two years of the time when the

tithe or tithe rent-charge became due (Tithe Act, 1836, s. 81; Tithe Act, 1891, s. 10 (2)).

The Tithe Act, 1891, s. 8, provides that where the County Court is satisfied that the tithe rentcharge exceeds two-thirds of the annual value of the lands (as assessed in "Schedule B." for income tax purposes) in respect of the twelve months next preceding the date on which the tithe rentcharge claimed had become due, then the Court is to remit the amount of such excess and a proportionate part of any current rate assessed on the owner of the tithe rentcharge.

See OCCUPIER'S LIABILITY NOTICE.

Tithing is a local division or district forming part of a hundred (q.v.), and is so called because every tithing formerly consisted of ten freeholders with their families. See FRANKPLEDGE.

Tithing Man. Anciently this meant the chief member of a tithing, or group of ten men associated in the frankpledge. Later the word came to mean the same as HEADBOROUGH (q.v.). See the statute 13 & 14 Car. 2, c. 12, s. 15.

Tithing Penny. Anciently this meant both a customary payment by the tenants of a manor to the lord and also a customary payment by the lords of manors at the old hundred court.

Title.—I. In the primary sense of the word, a title is a right. Thus a title of presentation is the right to present to a benefice. (See NEXT PRESENTATON.) This use of the word, however, is comparatively rare, and generally "title" means a right to property considered with reference either to the manner in which it has been acquired, or to its capacity of being effectively transferred.

In this sense of the word, titles are of the following kinds:—

With reference to the modes by which they are acquired, titles are of two kinds, namely, (1) original, where the person entitled does not take with reference to any predecessor; as in the case of title by occupancy, by capture, by invention (patent, copyright, trade mark, etc.), and by creation (as where the Crown grants a peerage): and (2) derivative, where the person entitled takes the place of a predecessor; this latter class is divisible into (a) title by the lawful and voluntary act of one or both of the parties; *e.g.*, title by conveyance, gift, devise, bequest, etc.; in the case of realty this is called title by purchase: (b) title by operation or act of the law, including title by descent, intestacy, succession, survivorship, escheat, forfeiture, marriage, dower, curtesy, limitation, prescription, bankruptcy, etc.: and (c) title by wrong or tort, which occurs in the case of wrongful possession, abatement, disseisin, intrusion, deforcement, usurpation, and purpresture. This last kind of title differs from the others in being liable to be defeated by the person rightfully entitled, until the title of the wrongdoer has become absolute by lapse of time (see LIMITATION.): subject to this, a title by wrong is always deemed to be the most extensive right which the subject-matter admits of; thus a disseisor of land is seised of an estate in fee simple by wrong.

With reference to their capacity of being effectually transferred, titles to land are of various kinds. Thus, a marketable title is one which goes back forty years; that is, the vendor must show a chain or transmission of title, by conveyance, descent or other lawful means, from his predecessor or predecessors, commencing at least forty years ago. A safe holding title is one resting on the undisturbed possession of the vendor for twenty years adversely to persons not under disability. Where a person agrees to sell land without making any stipulation as to the title, he must show a forty years' title (Vendor and Purchaser Act, 1874, s. 1). In almost all cases, however, the contract of sale stipulates that the title shall commence at a more recent date than forty years. In any case, the conveyance or other document with which the title commences is called the root of title, and if the vendor shows that he has the title which he is bound to prove, he is said to show a good title.

The Vendor and Purchaser Act, 1874, and the Conveyancing Act, 1881, contain a number of provisions similar to those usually inserted in ordinary contracts for sale of real property and leaseholds, so that a person who enters into an open contract now runs less risk of failing to show a good title than formerly. But these provisions are obviously inadequate to meet special defects.

Under the Land Transfer Act, 1875, ss. 5-9, a person entitled to land may prove and register either (1) an absolute title, being a title good against all the world (except incumbrancers and *cestui que trusts*, if any); or (2) a qualified title, being a title subject to specified reservations; or (3) a possessory title, being a title subject to all estates, rights, and interests existing at the time of registration. See LAND REGISTRIES.

The investigation of titles is one of the principal branches of conveyancing (q.v.); and in

that practice the word "title" has acquired the sense of "history" rather than of "right." Thus, we speak of an abstract of title (see ABSTRACT), and of investigating a title, and describe a document as forming part of the title to property.

II. "Title" formerly had the technical sense of a right to avoid an estate by entry, as opposed to the remedy by action. Thus if A conveyed land to B upon condition not to alien it in mortmain, and B broke the condition, A was said to have a title of entry, or title of mortmain; but he could not bring an action, and therefore had no right in the technical sense. See RIGHT OF ENTRY.

III. In ecclesiastical law "title" signifies (1) a cause for which a person may be ordained. The most common title is either a presentation to a vacant benefice or the fact that the candidate for ordination is about to be appointed by the bishop to some vacant benefice or curacy. Hence, title signifies (2) a presentation to a benefice; and (3) the church or living to which the minister is presented. In the Roman Catholic Church, titles or *tituli* are the churches in and near Rome which are assigned to cardinals.

IV. "Title" also signfies an appellation or address indicative of honour or dignity. Such titles are to a certain extent dependent on courtesy. Thus, no person can compel another to address or describe him by his title; but, so far as their use by the person himself is concerned, titles are matters of right, and, as it were, of property. The law, however, recognises the right of anyone to call himself by any name that he pleases; and so a peeress who has divorced her husband will not be restrained from using the title which was legally hers only during the continuance of the marriage. Some titles are hereditary and descend in fee simple or in tail, according to the nature of their creation. See DIGNITY.

V. Hence "title" signifies a description. Thus, in procedure, every action, petition or other proceeding, has a title, which consists of the name of the Court in which it is pending, the names of the parties, and (in the High Court of Justice) also the "reference to the record" (q.v.); administration actions are further distinguished by the name of the deceased person whose estate is being administered. Every pleading, summons, affidavit, etc., commences with the title. In many cases it is sufficient to give what is called the "short title" of an action, namely, the Court, the reference to the record, and the surnames of the first plaintiff and the first defendant: "In the High Court of Justice, Chancery Division. 1875. S. 311. Smith *v.* Jones."

VI. The title of a patent is the short description of the subject-matter of an invention which must (Patents and Designs Act, 1907, s. 2 (4)) be prefixed to every specification (see PATENTS), whether provisional or complete, of an invention. This is referred by the Comptroller to an examiner, and if the examiner reports that it does not sufficiently indicate the subject-matter of the invention, the Comptroller may refuse to accept the application for a patent or require amendment (s. 3 (2)), but there is an appeal to the law officers (q.v.) against any such decision (s. 3 (3)).

Title-deeds, says Mr. Williams, "though moveable articles, are not strictly speaking chattels. They have been called," [by Coke] "the sinews of the land, and are so closely connected with it that they will pass, on a conveyance of the land, without being expressly mentioned: the property in the deeds passes out of the vendor to the purchaser simply by the grant of the land itself. In like manner a devise of lands by will entitles the devisee to the possession of the deeds; and if a tenant in fee simple should die intestate, the title deeds of his lands will descend along with them to his heir-at-law." But where a vendor of lands has other lands to which the deeds relate, or retains any legal interest in the lands conveyed, he has a right to keep the deeds (Vendor and Purchaser Act, 1874, s. 2 (5)) unless he be a mortgagor. The purchaser, however, is entitled to a covenant for the production of the deeds whenever required in support of his title, if the vendor can give such a covenant (*ib.*, s. 2 (3) (4)). But this right is practically obsolete, for in the case of sales of land after the 31st December, 1881, a purchaser can get a written acknowledgment of his right to production, and to delivery of copies, of the deeds, in lieu of, but with the same effect as, an ordinary covenant for production (Conveyancing Act, 1881, s. 9); and if he requires attested copies of the title deeds retained by the vendor, he will have to bear the expense of making them (*ib.*, s. 3 (6)).

A tenant for life, or for any greater estate, is entitled to the possession of the title deeds of the land, but he must not injure or part with them.

It is felony to steal (Larceny Act, 1861, s. 28) or to forge (Forgery Act, 1913, s. 2 (2) (*b*)) any title deed.

Any seller or mortgagor of property real or

personal who conceals, etc., title deeds from a purchaser or mortgagee in order to get the transaction through is guilty of misdemeanour (Law of Property Amendment Act, 1859, s. 24; 1860, s. 8).

Tobacco. The cultivation of tobacco in England was illegal under the statutes 12 Car. 2, c. 34, 15 Car. 2, c. 7, ss. 15-17, and under the Tobacco Cultivation Act, 1831, ss. 1, 2. All these enactments were repealed by the Finance (1909-10) Act, 1910, s. 83 (5), and anyone with an excise licence, costing *5s.* annually, can now "grow, cultivate and cure" tobacco (*ib.*, s. 83 (2)). Under the Finance Act, 1912, s. 4, the Commissioners of Customs and Excise may authorise "responsible persons" who hold such licences, "to grow tobacco for the sole purpose of obtaining an extract therefrom to be used, without payment of duty, in the manufacture of insecticides or sheepwash or for other purely agricultural or horticultural purposes." On all other tobacco grown in the country duty is levied, under s. 83 (2) of the Act of 1910, at the rates specified in Part II. of Sch. IV of that Act.

The Children Act, 1908, Part III., imposes penalties on persons selling cigarettes and cigarette papers to persons apparently under the age of sixteen—with some exceptions—and selling tobacco of any kind to them for their own use. Other provisions empower constables and park-keepers to search any boy (but no girl) apparently under sixteen who is found smoking in any public place, and to confiscate any cigarettes, etc., found in his mouth or elsewhere; but this power does not seem to be extensively used.

Toft. "When land is built upon," (see *Plowd.* 170), "it is a messuage, and, if the building afterwards fall to decay, yet it shall not have the name of land, although there be nothing in substance left but the land, but it shall be called a toft, which is a name superior to land, and inferior to messuage: and this name it shall have in respect of the dignity which it once bore." The term "toft" is specially applied to ancient tenements within a parish or other district, the owners or occupiers of which are entitled to rights of common or commonable rights over land situate in the parish. (See ANCIENT MESSUAGES; LAMMAS LANDS.) The word, in its Latinised form, is found in old fines (q.v.) in collocation with the Latinised form of croft (q.v.): we read "*cum toftis et croftis*," "*toftum et croftum*," and so forth.

To Have and to Hold were the words in a conveyance which show the estate intended to be conveyed. Thus, in a conveyance of land in fee simple, the grant in the days of long forms was to "A and his heirs to have and to hold the said [land] unto and to the use of the said A, his heirs and assigns for ever." Now the grant is to "A to hold the same unto and to the use of the said A his heirs and assigns"; or, if the short form authorised by the Conveyancing Act, 1881, s. 57, Sch. IV., be adopted, the grant is to "A to hold to and to the use of the said A in fee simple." See HABENDUM.

Tokens. Small metallic discs which were issued from time to time by traders during the seventeenth and eighteenth centuries and the early part of the last century. Each bore the name of the person issuing it; and he pledged himself to redeem it in silver, on demand, for the amount stated on its face. They came into circulation owing to the scarcity of coins of small values. The use of them was prohibited by various enactments, of which that now in force is s. 5 of the Coinage Act, 1870.

Tolerance. As regards the coinage, "tolerance" is synonymous with "remedy" (q.v.).

Toll.—I. A toll is a payment for passing over or using a bridge, road, ferry, railway, market, port, anchorage, etc. Frequently the right to demand tolls forms part of a franchise (q.v.), as in the case of ferries, markets, ports, etc. Turnpike, harbour and railway tolls are generally created by Act of Parliament.

Toll traverse was a sum payable for passing over the private soil of another, or over a private road, bridge, ferry, or the like. Toll thorough was a sum payable for passing over the public highway: to support a claim for such a toll (which is a franchise) a consideration must be shown, *e.g.*, repairs to the highway by the owner of the franchise. Port toll was a charge on goods brought into a port. Turn toll was a charge made for every beast brought to a market but not sold.

A right of distress is incident to every toll, but the distress cannot be sold.

See PRESCRIPTION; STALLAGE.

II. As to "toll" in the sense of taking away, see DESCENT CAST.

Toll Dish. At an early period, when tolls on grain were paid in kind, this was a measure which held just the amount to be taken from each sack as toll.

Toller. One who gathered tolls.

Toll-tin. See TINBOUNDING.

Tolsey. A place at which tolls were collected.

Tolt. An obsolete writ by which a cause was removed from the Court Baron to the Sheriff's County Court. See PONE.

Tolzey Court of Bristol. This, originally, was the court of the bailiffs of the Hundred of Bristol. Subsequently it became merged in the Court of the Lord Steward of the King's Household (q.v.); Richard II. in 1395 revived its separate jurisdiction by charter; and it now sits under the authority of a charter of Anne, dated 24th July, 1710. Its jurisdiction includes mixed and personal actions to any amount, provided the cause of action arises within the city. Its procedure has been modernised by Orders in Council made 1871, 1873, 1878, 1883, and 1890. The Recorder is *ex officio* the judge.

Tombstones. Tombstones in churchyards, it seems, can only be erected with the consent of the incumbent, and he may refuse to allow objectionable inscriptions on tombs. Tombstones in the body of the church can only be erected by leave of the ordinary, given by a faculty, though it seems that the consent of the incumbent is usually sufficient, or that of the rector, if the stone is to be erected in the chancel. A tombstone, when properly erected, does not vest in the incumbent, although annexed to the church or churchyard, the freehold of which is in him; therefore the person who set it up, or the heirs of the deceased, have an action of trespass against anyone who defaces or removes it. Gifts by will for the erection or maintenance of tombstones in churchyards are void, if unlimited in point of time, being contrary to the rule against perpetuities: gifts for the maintenance of tombstones or monuments forming part of the fabric of a church are valid because they are for the public benefit, and are therefore charitable within Part II. of the Mortmain and Charitable Uses Act, 1888, or within the Mortmain and Charitable Uses Act, 1891, or, formerly, within the enactments repealed by those statutes. See BURIAL; CHARITY; CHURCHYARD.

Ton. This consists of twenty hundredweights (q.v.) (Weights and Measures Act, 1878, s. 14).

Tonnage was anciently a duty on imported wines, imposed by Parliament, in addition to prisage (q.v.). The duty was at the rate of so much for every ton or cask of wine; and tunnage would appear to be the more correct form of the word. It was first levied in the fourteenth century and was granted for life to several kings. It became practically a fixed tax in the reign of Anne: see the statute 9 Anne, c. 6, s. 1. It was finally abolished by the statute 27 Geo. 3, c. 13. The present duties on wines are regulated by the Customs Acts.

Tonnage-rent. When the rent reserved by a mining lease or the like consists of a royalty on every ton of minerals gotten in the mine, it is often called a tonnage-rent. There is generally a dead-rent in addition. See RENT.

Tontine. A financial arrangement under which subscribers to a loan each receive for life an annuity, which increases as other subscribers die, so that ultimately the last survivor receives for whatever is left of his life an annuity amounting in the aggregate to the total of the original annuities.

The system was used on several occasions during the eighteenth century by the British Government. The last Act passed for the purpose was the statute 29 Geo. 3, c. 41, entitled "An Act for raising a certain Sum of Money, by way of Annuities, to be attended with the Benefit of Survivorship, in Classes."

Torrens' Act. The popular title of the Artizans' and Labourers' Dwellings Act, 1868, passed at the instance of Mr. William McCullagh Torrens, M.P. It and other Acts on the same subject were repealed and replaced by the Housing of the Working Classes Act, 1885.

Torrens' System. A system of registration of title to land which was introduced into the legal system of South Australia in 1858 at the instance of Sir Robert Torrens, the first Premier of the colony. It was subsequently adopted in all the other Australian colonies, as well as in Canada; and it is the foundation of the system which has been in part established here under the Land Transfer Acts, 1875 and 1897. See LAND REGISTRIES.

Tort.—I. In its original and most general sense, "tort" is any wrong—as in the phrase "*executor de son tort*." See EXECUTOR.

II. More commonly, however, "tort" signifies an act which gives rise to a right of action, being a wrongful act or injury consisting in the infringement of a right created otherwise than by a contract. Torts are divisible into three classes, according as they consist in the infringement of a *jus in rem*, or in the breach of a duty imposed by law on a person towards another person, or in the breach of a duty imposed by law on a person towards the public.

The first class includes (a) torts to the body of a person — such as assault, battery, nuisance; or to his reputation—such as libel, slander, malicious prosecution; or to his liberty—as in the case of false imprisonment

and malicious arrest; (b) torts to real property—such as ouster, trespass, nuisance, waste, subtraction, disturbance; (c) torts to personal property, consisting (i) in the unlawful taking of or detaining of or damage to corporeal personal property or chattels (see REPLEVIN; DETINUE; TROVER); or (ii) in the infringement of a right to a patent, trademark, copyright, etc. (see INFRINGEMENT; PIRACY): (d) slander of title: (e) deprivation of service and *consortium* (see MASTER AND SERVANT; PER QUOD).

The second class includes deceit and fraud (q.v.), and negligence in the discharge of a private duty. Thus, if A., a stage-coach proprietor, contracts with B. to carry his servant C., and, in performing his contract, is guilty of negligence which causes bodily hurt to C., and consequent damage, by loss of his services, to his master; then A. may be sued by B. for breach of contract, and by C. for negligence, that is for a tort. So, if a physician is guilty of negligence in treating a patient, he may be sued either for breach of contract or for tort. This kind of tort is called a tort arising out of contract, in opposition to a pure tort (*e.g.*, an assault).

The third class includes those cases in which special damage is caused to an individual by the breach of a duty to the public, whether the breach consist of malfeasance, nonfeasance, or misfeasance. The principle instances of this class of torts fall under the heads of negligence and nuisance. Thus, if a person does something, which is not only a public nuisance, but also causes special damage to an individual, he is liable to that individual for a tort.

These divisions are of importance with reference to the question whether, on the death of the person injured, or of the tortfeasor, his personal representatives can sue or be sued for the tort; the general rule being, that the right to sue, and the liability to be sued, for torts to property passes to the personal representatives of the injured person, or of the tortfeasor, but that in other cases it does not, except where the death of the deceased was caused by the tort. See ACTIO PERSONALIS, ETC.

The distinction between tort and contract is important with reference to the limitation of actions (q.v.), and in the law of bankruptcy, claims for damages from torts not being provable. See DEBT.

See DAMAGE; DAMNUM SINE INJURIÂ; INJURY; NEGLIGENCE; QUASI-TORT.

Tortfeasor is a wrongdoer, or one who commits a tort, especially a trespass. See CONTRIBUTION; OMNIA PRÆSUMUNTUR, ETC.

Tortious means wrongful. Formerly certain modes of conveyance (*e.g.*, feoffments, fines, etc.) had the effect of passing not merely the estate of the person making the conveyance, but the whole fee simple, to the injury of the person really entitled to the fee, and they were hence called tortious conveyances. But this operation has been taken away. See FEOFFMENT; FINE.

Torture. It has been constantly said that the law of England has never recognised torture as a permissible means of extracting evidence. It is indeed true that there has never been any statute or any decision expressly legalising it, and that in 1628 the judges declared it to be illegal. But it was commonly and notoriously inflicted during the reigns of the Tudors and of the first two Stuarts; and the Legislature and the Courts practically acquiesced. The statute 27 Hen. 8, c. 4, recited in the preamble that pirates could not be convicted unless upon the evidence of witnesses—whom the pirates were careful not to leave alive—or unless they confessed, "*which they will never do without torture or paynes*"; and Coke, although he wrote "there is no law to warrant tortures in this land," went out of his way to say in 1600, at the trial of Essex for treason, that the Queen had shown "over much clemency" inasmuch as no man had been "racked, tortured or pressed." The use of torture was, in fact, habitually carried on under orders of the king, of the Star Chamber and of the Privy Council down to the outbreak of the Civil War. It was finally suppressed by the Bill of Rights.

Torture as a punishment was down to recent times a part of the legal system. The *peine forte et dure* (q.v.), branding (q.v.) with a red-hot iron, and the pillory (q.v.) were practically torture.

Tot; Totted; Totting. To "tot" an item in the sheriff's account was to write opposite it the word "tot" or the letter "T" in order to indicate that he had levied the money and must account for it. Such an item was said to be totted; and the marking of an item in this manner was called totting. The word "totted" (or rather its Norman-French equivalent *tottee*) is to be found in the statute 42 Edw. 3, c. 9; and it was used in textbooks only a hundred years ago.

Compare NIHIL.

Total Loss. See LOSS.

Toties quoties. (As often as something happens; as often as occasion arises.) See

for instance the statute 19 & 20 Car. 2, c. 4, where it was enacted that "such assignee may in like manner assign again and so *toties quoties*."

Tourn. See SHERIFF.

Tout temps presz et encore est. The Norman-French form of the averment that a defendant "always was and still is ready" to pay the debt. See TENDER; SEMPER PARATUS; UNCORE PRIST.

Towage. In Admiralty law, a towage service is where one vessel is employed to expedite the voyage of another, when nothing more is required than to accelerate her progress, as opposed to a salvage service, which implies danger or loss. (See SALVAGE.) A towage service gives a right to remuneration; but, although in many cases where salvage has been claimed the Court has decreed only towage remuneration, there are comparatively few cases in which suits have been instituted for mere towage. Claims for towage remuneration are generally enforced in Courts having admiralty jurisdiction. Anciently the word was also used as meaning money paid to the owner of land for the use of land as a tow-path.

Town, in the technical sense of the word, is a collection of houses, which "hath, or in time past hath had, a church and celebration of divine service, sacraments and burials," but, says Coke, "if a towne be decayed so as no houses remaine, yet it is a towne in law." Some towns are cities or boroughs (q.v., and see MUNICIPAL CORPORATION). In the old books, "upland town" seems to mean a town which is neither a city nor a borough. See VILL.

In the popular sense of the word, a town is a congregation of houses so near to one another that the inhabitants may fairly be said to dwell together. The word is so used in the Lands Clauses Consolidation Act, 1845, s. 128. (See PRE-EMPTION.) The name of such a town is a matter of reputation.

Township seems to mean a district of land containing a town, and under the same administration as the town itself. Blackstone says, that when a hamlet or other small collection of houses is adjacent to a town, but governed by separate officers, it is, to some purposes in law, looked upon as a distinct township (*Com.* I., 115).

Towns Improvement. The Towns Improvement Clauses Act, 1847, was passed to consolidate in one Act certain provisions usually contained in Acts for paving, draining, cleansing, lighting and improving towns. Local Acts appointing commissioners for the improvement of towns generally incorporate the provisions of this Act, but such Acts are now rarely passed, as the provisions of the Local Government Acts and the Public Health Acts (see the various titles) have practically superseded them.

Traction Engine. The popular name of what is known to the law as a heavy locomotive. See LOCOMOTIVES.

Trade. See RESTRAINT OF TRADE; TRADE-MARK; TRADER. As to usages of trade, see CUSTOM.

Trade Boards. Bodies established under the Trade Boards Act, 1909, for the purpose of fixing minimum wages (q.v.) under that Act.

Trade Description. "Any description, statement or other indication, direct or indirect as to (a) the number, quantity, measure, gauge, or weight of any goods; (b) the place or country where any goods were made or produced; (c) the mode of manufacturing or producing any goods; (d) the material of which the goods are composed; (e) any goods being the subject of an existing privilege, patent or copyright, and the use of any figure or mark which, according to the custom of the trade, is commonly taken to be an indication or any of the above matters" (Merchandise Marks Act, 1887, s. 3). See FALSE TRADE DESCRIPTION.

Trade Label. A small piece of paper, etc., affixed to goods with a design of some kind printed thereon. The use of a trade label too closely resembling one already in use will be restrained by injunction.

"Trade Mark." This expression has different meanings for the purposes of different Acts. As to its meaning for the purposes of the Merchandise Marks Act, 1887, see that title; as to its meaning for the purposes of the Trade Marks Act, 1905, see TRADE MARKS.

Trade Marks. The Trade Marks Acts, 1905 to 1919 are the Trade Marks Act, 1905, the Trade Marks Act, 1914, the Trade Marks Act, 1919, and so much of the Patents and Designs Acts, 1907 to 1919, as relates to trade marks (Trade Marks Act, 1914, s. 3; Trade Marks Act, 1919, s. 13 (1)). That part of the Patents and Designs Acts, 1907 to 1919, which relates to trade marks is the Patents and Designs Act, 1907, s. 91 (as amended by the Patents and Designs Act, 1919, s. 20, sch.); it relates to international and colonial arrangements regarding, amongst other things, trade marks. By virtue of these Acts the Board of Trade have made various Rules, of which those now in force are the Trade Marks Rules, 1920, dated 9th March, 1920.

In the widest common-law sense of the ex-

pression, "trade mark" denotes any means of showing that a certain trade or occupation is carried on by a particular person or firm, including, therefore, not only trade marks in the narrower sense of the word (*infra*), but also trade names (q.v.) and marks which are not in themselves, or in their origin, distinctive, but which have become known by custom and reputation as showing that goods or implements of trade are made, sold or employed by a particular person or firm.

In a narrower common-law sense of the word, a trade mark is a distinctive mark or device affixed to or accompanying an article intended for sale for the purpose of indicating that it is manufactured, selected, or sold by a particular person or firm. Trade marks of this kind were required to be registered under the Trade Marks Registration Act, 1875, now repealed and replaced by the Trade Marks Acts, 1905 to 1919; and the effect of the Act of 1875, and the Acts replacing it, is that no one can enforce his right to a trade mark which is registrable but is not registered.

The Act of 1905, s. 3, defines a trade mark as being, for the purposes of that Act, "a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such marks by virtue of manufacture, selection, certification, dealing with, or offering for sale." A registrable trade mark must consist of one or more of the following things: "(1) The names of a company, individual or firm represented in a special or particular manner; (2) the signature of the applicant for registration or of some predecessor in his business; (3) an invented word or invented words; (4) a word or words having no direct reference to the character or quality of the goods and not being in its ordinary signification a geographical name or a surname; (5) any other distinctive mark." (s. 9).

Colour may form one of the particulars which is specified with regard to a trade mark (s. 10). There is in the Patent Office (q.v.) a register of trade marks in which all registered trade marks, and the proprietors thereof, are entered (s. 4). The registration of trade marks which are obviously improper is prohibited (s. 11). Registration is for a period of fourteen years, but may be renewed from time to time (s. 28).

Under s. 63, the Company of Cutlers in Hallamshire (see CUTLERS) have at Sheffield a branch register, known as the Sheffield Register, for trade marks used on metal goods and registered by persons carrying on business in or within six miles of Hallamshire (q.v.); and under s. 64 there exists at Manchester a branch, known as the Manchester Registry, of the Patent Office for the registration of trade marks for cotton yarn, sewing cotton, cotton piece goods and other cotton goods not being articles of clothing.

The Act of 1919 (ss. 1, 13 (2)) provides that, as from 1st April, 1920, the register of trade marks, including the Manchester Registry but not the Sheffield Register, is divided into two parts—Part A. to consist of marks registered under the Act of 1905 whether before or after 1st April, 1920, and Part B. to consist of marks registered under the Act of 1919 and of all marks entered in or removed to it under the Act of 1919.

The Act of 1919, s. 2, provides that certain marks not registrable under the Act of 1905 may be registered in Part B.; s. 6 provides for the removal from the register of trade marks consisting of a word which is the only practicable name of an article in respect of which no patent exists and contains other provisions to prevent the abuse of trade marks.

A trade mark cannot be assigned or exist in gross, that is to say, apart from the goodwill of the business connected with the goods to which it relates: see s. 22 of the Act of 1905

The right of the owner of a registered trade mark is clear; he is entitled to prevent anyone else from applying it, or any device closely resembling it, to goods of the same class as those in connection with which he himself uses it. (As to his remedies, see INFRINGEMENT.) This right is an absolute one, and does not depend on the state of mind of the infringer: A. may *bonâ fide* invent a trade mark which has already been used by B., but the fact that he never heard of B.'s trade mark is no defence to proceedings for infringement Again, where goods are sold under a false trade mark, even if the purchaser is told that the goods are the goods of the actual seller, but the imitated mark is upon them, there is ground for interference [by the Court], since the goods may be resold bearing the mark, but without the information necessary to correct the statement thereby made. From its absolute and negative nature, the right to a trade mark is frequently called a property (q.v.). An action for infringement cannot be brought in the County Court.

The true nature of a trade mark in the wide sense of the word, that is, of trade marks not capable of registration, is not yet settled. It was formerly considered that the right of the owner of a trade mark of this kind (*e.g.*, a

trade name) was entirely dependent on the question of misrepresentation, so that a person who without fraud used a name or mark which had been previously used by another person, could not be made liable for doing so. This doctrine has been recently shaken, but the point is still open.

See GOODWILL; MERCHANDIZE MARKS ACT; PUBLICI JURIS.

Trade Name. A trade name is a name which by user and reputation has acquired the property of indicating that a certain trade or occupation is carried on by a particular person. (See GOODWILL.) The name may be that of a person, place or thing, or it may be what is called a fancy name (that is, a name having no sense as applied to the particular trade), or a word invented for the occasion, and having no sense at all. It may be applied to goods, to a magazine, or any other subject of trade.

A trade name gives the person entitled to use it the right of preventing any other person from using it so as to induce purchasers to believe that his goods are the goods sold or manufactured by the original maker, and thus to injure the latter. Thus, where a firm had obtained a reputation for a particular kind of goods distinguishel by the word "Glenfield," which was the name of the place where the goods had originally been manufactured, a person who sold the same kind of goods under the name "Glenfield" was restrained by injunction from so doing, although he had a small manufactory at the place called Glenfield, because it was apparent on the evidence that he used the word to induce the public to believe that in buying his goods they were buying the goods of the plaintiff, the original manufacturer.

As to whether an action will lie where a trade name is used wrongfully but without fraud, see TRADE MARKS.

Trader. Traders were formerly subject to special provisions of the bankruptcy law: thus, for instance, until s. 69 of the Bankruptcy Act, 1861, made all debtors subject to the provisions of that Act, only traders could be made bankrupt; under s. 6 of the Bankruptcy Act, 1869, the time allowed for compliance with a debtor's summons (q.v.) was shorter in the case of a trader than in the case or other persons; and under s. 15 (5) of the Act of 1869, the doctrine of reputed ownership (q.v.) was confined to traders. "Trader" within the bankruptcy law included not only persons carrying on trades in the ordinary sense, but also bankers, shipowners, and many similar classes, enumerated in the First Schedule to the Bankruptcy Act, 1869. Now all these distinctions between traders and non-traders have been abolished, and the only remaining exception affects married women, who still can be adjudicated bankrupt only when carrying on trade or business, whether separately from their husbands or not (Bankruptcy Act, 1914, s. 125 (1)).

Trade Secret. The disclosure of trade secrets obtained by breach of confidence or obtained under a contract, whether implied (as in the case of employees) or express, not to divulge them, will be restrained by injunction; and an action with regard to trade secrets may be heard *in camera* if a public hearing would defeat the ends for which the action is brought. See CAMERA, IN.

Trade-unions were originally mere friendly societies consisting of artisans, engaged in a particular trade, such as carpenters, bricklayers, etc.; but in course of time they acquired the character of associations for the protection of the interests of workmen against their employers. The principal objects of such societies at the present day are to increase the rate of wages, reduce the hours of labour, and bring about an equal division of work among a large number of workmen by establishing a uniform minimum rate of wages. They attain these objects principally by the legal means of "strikes," *i.e.*, the stoppage of work by all the members until their demands are complied with, and the process known as picketing (q.v.). The members are supported during strikes by the funds of the society, which are obtained by weekly subscriptions during periods of work. Many trade-unions are also friendly societies.

Formerly trade-unions were not recognised by law; and, as a general rule, their regulations, being in restraint of trade, were illegal, and incapable of being enforced; but, by the Trade Union Act, 1871, this doctrine was abolished, and provisions (analogous to those applying to friendly societies (q.v.)) are made for the registration of trade-unions, for the regulations to be contained in their rules, and for the appointment of trustees in whom the property of the union is to vest, etc. But (*ib.* s. 4) no agreements between the members as to the conditions on which they are to work, or as to the payment of subscriptions or application of the funds, are enforceable in any Court of law.

It was decided in 1911 that trade-union funds could not be applied to the support of members of the House of Commons or of other elected bodies. The Trade Union Act, 1913,

permits a union to resolve, by a majority of the members voting at a ballot, to raise a fund for the purposes mentioned above; and it also provides that any member can secure exemption from contributing to such fund if he objects to contributing; but when a union spends money on political purposes means are in fact found of getting all members to contribute whether they like it or not.

Traditio loqui chartam facit (5 *Rep.* 1). (Delivery makes a deed speak): that is to say, without delivery it is of no effect. Compare ESCROW; IN TRADITIONIBUS, ETC.

Trafalgar Square. As this square is within one mile of Westminster Hall, no public meeting (q.v.) can be held there during any session of Parliament. It is the property of the Crown, which consequently can at any time refuse to allow any meeting to be held there. In practice the regulation of meetings within the Square is left to the Commissioner of Police. The Square is (under the Trafalgar Square Act, 1844) part of the Metropolitan Police District.

Trail-baston. This was a commission to make enquiry as to persons who ill-treated jurors, sheltered malefactors or otherwise disturbed the peace. The commissioners were known as Justices of Trail-baston. It was first issued about 1296 and fell into disuse before the end of the fourteenth century. It was the connecting link between the commission IN EYRE (q.v.) and the commission of OYER AND TERMINER (q.v.).

Trailers and Six-wheelers. Until the making of the Heavy Motor Car (Amendment) Order, 1922, the speed of a heavy motor car could not legally (Heavy Motor Car Order, 1904, art. vii.) exceed five miles an hour when it drew a trailer. But under the Order of 1922 the speed may be twelve miles an hour, when the trailer is a two-wheeled vehicle connected with the motor car by a turntable and gimbals (so that the car and the trailer together form a flexible six-wheeler) and when the combined length does not exceed thirty-three feet and certain limits as to weight are observed.

Article X. (5) of the Order of 1904 provides that no heavy motor car used for the conveyance of passengers for hire may draw a trailer: and that is still law.

Tramps. See CASUAL POOR; VAGABOND.

Tramway. There is no statutory definition of this term, which must be taken as bearing in law its popular meaning of a line of rails level with the surface of the ground, which is, or may be, laid along a public road so that the space occupied by the line is available for ordinary wheeled traffic as well as for tramway cars. A tramway is constructed under a provisional order made pursuant to the Tramways Act, 1870, or under a private Act of Parliament, unless it is such a tramway as comes within the meaning of the term "light railway" (q.v.).

Trani, Laws of. A code of maritime law which originated in 1063 at the Italian seaport of Trani, situate on the Adriatic about eighty miles north of Brindisi. They are printed, with a translation, in Vol. 4 of Sir Francis Twiss' edition of the *Black Book of the Admiralty*. The full title of the code is the "*Ordinamenta et Consuetudo Maris, edita per Consules Civitatis Trani.*"

Transcript is an official copy of certain proceedings in a Court. Thus, any person interested in an account in the books of the Paymaster-General can obtain a transcript of it (S. C. F. R., r. 100).

In the Privy Council, when an appeal was brought to the Judicial Committee, the appellant had formerly to see that a transcript of the proceedings and evidence in the Court below was prepared and transmitted to the Colonial Office by the proper officer. What was formerly called the transcript is now known as the record, which is transmitted to the Registrar of the Privy Council: see Judicial Committee Rules, 1908, rr. 12 *et seq.*

Transcripto pedis finis levati mittendo in cancellarium, De. A writ anciently used for certifying to the Court of Chancery the foot (or chirograph) of a fine (q.v.) levied before the justices in eyre.

Transcripto recognitionis factæ coram justiciariis itinerantibus, De. A writ anciently used to certify a recognisance taken before the itinerant justices (or justices in eyre).

Transept. The part of a church between the nave and the choir. In churches of the Gothic style the ends of the transept project on each side of the edifice. *Primâ facie* the transept belongs to the incumbent and the churchwardens.

Transfer.—I. In the law of property, a transfer is where a right passes from one person to another, either (1) by virtue of an act done by the transferor with that intention, as in the case of a conveyance or assignment by way of sale or gift, etc.; or (2) by operation of law, as in the case of forfeiture, bankruptcy, descent, or intestacy. A transfer may be absolute or conditional, by way of security, etc. See ASSIGNMENT; BILL OF SALE; CONVEYANCE.

In practice, "transfer" is used principally in the sense of voluntary transfer, and is

applied especially to the operation of changing the ownership of stock, shares, etc., whether by registering an assignment or other instrument, or by making a simple entry in the register kept for that purpose. The person making the transfer is called the transferor, and the person to whom it is made the transferee. See SHARE; STOCK.

In chancery and lunacy practice, stocks and other securities standing in the names of trustees, lunatics, and other persons, are sometimes ordered to be transferred into the name of the Paymaster-General pending the proceedings, in order that they may be kept in safety until the time comes for them to be transferred out of Court to the parties entitled. See PAYMENT INTO COURT; CERTIFICATE.

Land registered under the Land Transfer Act, 1875, is transferred or conveyed by the execution of an instrument of transfer in the statutory form, and by the entry of the transfer on the register (see ss. 29, 34). The transfer of registered charges is similar (s. 40). See CHARGE; LAND REGISTRIES.

A transfer of a mortgage takes place when the mortgaged property and the right to receive the mortgage debt are conveyed by the mortgagee, either alone or with the concurrence of the mortgagor, to a third person. Before the Judicature Acts, it was an advantage to obtain the concurrence of the mortgagor, in order that he might covenant with the transferee for payment of the debt, for otherwise the transferee was obliged to sue for the debt as attorney of the mortgagee; but now, under s. 25 (6) of the Judicature Act, 1873, the assignee of a debt can sue in his own name. See CHOSE.

As to the transfer of judgments, see JUDGMENT.

II. In procedure, "transfer" is applied to an action or other proceeding, when it is taken from the jurisdiction of one Court or judge and placed under that of another. Any action in the High Court may be transferred from one division to another, or (in the case of an action in the Chancery Division) from one judge to another, by order of the Lord Chancellor (Ord. 49, r. 1); in the case of a transfer from one division to another, the consent of the president of each division is required (*ib.*). A division may also transfer an action to any other division with the consent of the president of the latter division (*ib.* r. 3). In the Chancery Division, a transfer of a cause from one judge to another may be either for all purposes, or for the purpose of trial or hearing only (*ib.* r. 2). A particular application in any cause or matter pending in any Court or in any division may be disposed of, by direction of the Lord Chancellor, by any judge of the High Court willing to deal with it (*ib.* r. 4). Any judge of the Chancery Division may dispose of any cause or matter pending before any other judge of the division; and this is done merely by arrangement between the judges (*ib.* r. 4A). Any judge of the Chancery Division before whom an estate is being administered or a company is being wound up may transfer into his Court any action pending elsewhere against the estate or the company (*ib.* r. 5).

See REMITTED ACTIONS.

Transgressione, De. Anciently the general name of the various writs with which the various actions of trespass were commenced.

Transhipment. If a ship is in distress in a foreign port, and the master is unable to carry the cargo further, he is generally entitled to tranship it, that is, put it on board another vessel and forward it to its destination, and thus earn the freight. But he is not justified in doing so if it would increase the freight payable by the shipper of the cargo, or cause a loss to the owners of the ship.

Transire. In the law of merchant shipping, when a coasting vessel is about to sail from her port of lading, an account giving particulars of the ship and her cargo must be delivered in duplicate to the Customs Collector of the port. He returns the original account, dated and signed by him, and this constitutes the "clearance" of the ship, and the "transire" or pass for the cargo; that is, it is an authority to the Custom House officers to let the vessel sail. The transire must be delivered up to the collector at the port of discharge before any of the cargo is unladen. A general transire may be granted to a coasting ship. See the Customs Consolidation Act, 1876, ss. 145, 146.

Transit; Transitus. See STOPPAGE IN TRANSITU.

Transit in rem judicatam, "It passes into or becomes a *res judicata*," is a short mode of saying that when a person has obtained a judgment in respect of a given right of action, he cannot bring another action for the same right, but must take proceedings to enforce his judgment. See MERGER; RES JUDICATA

Transitory. See ACTIONS.

Transit terra cum onere (*Co. Litt.* 231*a*). (Land passes with its burthen.) Compare QUI SENTIT; ETC.

Translation. In ecclesiastical law, this means the transfer of a bishop from one diocese to another. There is, of course, no

consecration; but all the other formalities required for the creation of a bishop are observed.

Transport, Ministry of. This Ministry was established pursuant to the Ministry of Transport Act, 1919, s. 1. The powers of a number of Government Departments regarding transport were transferred to it (see BOARD OF TRADE); and a separate road construction department of the Ministry was authorised (s. 2 (4)). The head of the Ministry is the Minister of Transport (s. 1) who has a Parliamentary Secretary. The salary of the Minister is £5,000 a year and that of the Parliamentary Secretary is £1,500 a year (s. 25 (2)). Both of them can be members of the House of Commons (s. 27). The Minister is, and apparently will be, a member of the Cabinet. See OFFICE OF PROFIT.

Transportation. This began in the reign of Elizabeth with the sending of offenders to the North American plantations, where they were employed in a servile capacity under royal warrant or under indentures entered into by them in order to escape other punishment. The practice was recognised by the statute 39 Eliz. c. 4. This transportation by consent was superseded in 1717 (see the statute 4 Geo. 1, c. 11) by a system, which continued until 1853, under which a number of felonies were expressly made punishable by transportation. After 1776 transportation was at first to Africa and subsequently to Australia. Under the Transportation Act, 1824, which revised and consolidated the previous Acts on the subject, the Crown was enabled to appoint places beyond the seas to which offenders might be conveyed and kept to hard labour, and the same statute empowered the Crown to substitute transportation for capital punishment without its being necessary to obtain the consent of the convict. During the early part of the reign of Victoria the punishment of transportation was abolished, and that of penal servitude (q.v.) substituted.

Traverse. In the ordinary practice of the High Court, to traverse is to deny an allegation of fact. The term is used both in pleadings and in affidavits: thus if a plaintiff replies by simply joining issue on the statement of defence he traverses, that is, denies, all the material allegations in the defence. (See Ord. 19, r. 18.) See CONFESSION AND AVOIDANCE; QUÆ EST EADEM.

So, in an answer to interrogatories, a denial of the allegation impliedly contained in an interrogatory is a traverse, and may be either simple or subject to an explanation or admission previously given. (See ANSWER.) In an affidavit of documents, again, the paragraph stating that the deponent has no documents in his possession except those specified in the affidavit used sometimes to be called the traverse, because the affidavit was in the same form as if it were made in answer to an interrogatory.

Traverse of office or inquisition is a mode by which a subject can, in certain cases, dispute an office or inquisition finding the Crown entitled to property claimed by him. It was formerly a convenient remedy, on account of the difficulty of obtaining redress against the Crown by petition of right, but since the amendment and extension of the latter mode of proceeding, traverses of office have fallen into disuse. One of the most usual instances of their use was in resisting extents (see EXTENT), in which case the defendant or traverser (*i.e.*, the person claiming the property) entered an appearance and claim, followed by a plea or traverse disputing the debt alleged by the Crown, to which the Crown replied or demurred, and so on, until issue joined, when the cause was tried by a jury at Westminster. Judgment for the Crown on a traverse is, "that the subject take nothing by his traverse"; if for the subject, it is judgment of *amoveas manus*—"that the King's hands be amoved, etc."

This procedure by traverse was extended to inquisitions in lunacy by the statute 2 & 3 Edw. 6, c. 8. Under the present practice, where a person has been found lunatic by inquisition (q.v.), and he, or the husband or wife of the lunatic, or someone having an interest in his estate, wishes to vacate it on the ground that he was of sound mind and capable of managing himself and his property when it was returned, he files a petition (Lunacy Rules, 1892, r. 17) for leave to traverse the inquisition at the Master's Office within three months after the inquisition has been returned (Lunacy Act, 1890, s. 101). The petition is heard by the judge in lunacy (rr. 23, 18), and if he grants leave there is drawn up and filed in the Crown Office a traverse or plea alleging the insufficiency of the inquisition, to which issue is joined in the name of the Attorney-General representing the Crown. The traverse then comes into the King's Bench Division for trial, and is tried before a jury in the same manner as an ordinary issue. The result is either to affirm or vacate the inquisition unless the judge in lunacy directs a new trial under s. 103. It is, however, to be noted that under s. 104 no

traverse is allowed to the verdict of a jury upon an issue tried in the High Court, but a new trial or a new inquisition may be applied for. See INQUIRY.

Formerly, where a person indicted of a misdemeanour, but not actually in custody, traversed the indictment by pleading not guilty, the trial was postponed until the next assizes or sessions, and hence "traverse" came to mean "postpone." The Criminal Procedure Act, 1851, s. 27, provides that no person shall be entitled to traverse, that is, postpone, the trial of any indictment.

Traversing Answer; Traversing Note. In suits under the old practice in Chancery, where the defendant refused or neglected to file an answer to the bill, the plaintiff might file either a traversing answer or a traversing note, which produced the same effect as if the defendant had filed an answer traversing the case made by the bill. (See PRO CONFESSO.) Now, in the corresponding case, the plaintiff sets the action down on motion for judgment under Ord. 27, r. 11.

Treadmill. A wheel which, in principle, was the same as the water-wheel used in old flour-mills. The treadmill was set in motion by the weight of prisoners treading on steps. It was introduced into English prisons in 1818, and was for long a recognised means of causing prisoners to perform hard labour. By 1910 it had fallen into complete disuse.

Treason, in its most general sense, is a crime committed by one person against another to whom he is bound by some tie of allegiance or subjection. It was formerly of two kinds, high treason and petit treason. The former now alone exists.

I. Under the Treason Act, 1351, a person commits high treason who does an overt act showing an intention to kill or depose the King, or to do him any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint; or to kill the wife of a king regnant; or to kill the heir-apparent to the throne; or who levies war against the King; or who attempts by insurrection to intimidate the King or the Houses of Parliament; or who actively assists the King's enemies; or who violates the wife of a king regnant, or the eldest daughter of the Sovereign, or the wife of the heir-apparent; or who kills the Lord Chancellor, or one of certain other high officials of the Crown. See OVERT ACT.

High treason is punishable by hanging, or by beheading, if so directed by the Crown (Treason Act, 1814, ss. 1, 2).

The offence is an exception to the ordinary criminal law (i) in being subject to limitation in respect of time (Treason Act, 1695, ss. 5, 6, providing that no person shall be prosecuted for treason committed in Great Britain but within three years after the offence, except in the case of a designed assassination of the Sovereign); (ii) in two witnesses being required for a conviction, unless the prisoner freely confesses his crime (*ib.*, s. 2); and (iii) in the prisoner being entitled to have a copy of the indictment (*ib.*, s. 1) and lists of the witnesses and jurors delivered to him ten days before the trial (*ib.*, s. 7; Treason Act, 1708, s. 11). The Treason Act, 1842, s. 1, provides that these enactments of William III. and Anne shall not apply to attempts upon the life of the Sovereign; and it further provides (s. 2) that assaults upon the person of the Sovereign shall be misdemeanours punishable with penal servitude and whipping.

II. Petty treason was where a servant killed his master, a wife her husband, or an ecclesiastical person his superior, such a crime being considered a violation of private allegiance. Petty treason was abolished by the statute 9 Geo. 4, c. 31, s. 2 (replaced by s. 8 of the Offences against the Person Act, 1861) which converted it into the crime of murder, from which it had differed only in its punishment: see BURNING TO DEATH.

See ACCESSORY; DE FACTO.

Treason Felony. A general desire to provide, in respect of treason and acts of a treasonable nature, a punishment less rigorous than that provided for treason by the existing law, led to the enactment of the Treason Felony Act, 1848, which declares that treason felony consists in an intention to depose or levy war upon the Sovereign or compel him to change his measures or counsels, or to terrorise either House of Parliament, or to incite any foreigner to invade the King's dominions, coupled with an expression of such intention by any printing or writing or by open and advised speech or by any overt Act; and the statute provides that penal servitude for life shall be the maximum punishment for treason felony.

Treasurer. In each county there is an officer so entitled, who takes charge of the county funds and accounts. Formerly he was appointed by the justices: now (Local Government Act, 1888, s. 3 (10)) he is appointed by and holds office during the pleasure of the county council. See TREASURER; UNDER TREASURER.

Treasurer's Remembrancer. An official of the Exchequer who prepared the financial busi-

ness which was to be brought before the barons at the time when they and the Treasurer managed the king's revenues. See TREASURY.

Treasure Trove is where any money, coin, gold, silver, plate, or bullion, is found hidden in the earth or other private place. It belongs to the Crown, unless the owner appears to claim it. The Crown may grant the right to treasure trove found within a certain district to a private person, *e.g.*, the lord of a manor. (See FRANCHISE; MANOR; PREROGATIVE; DERELICT; WRECK.) In the absence of such a grant anyone concealing treasure trove which he may find is guilty of a common law misdemeanour.

The coroner has jurisdiction to hold an inquest, under s. 36 of the Coroners Act, 1887, as to treasure trove; but his function is confined to ascertaining whether any given thing is or not within the definition, and he cannot enquire as to who is entitled to it.

See THESAURUS, ETC.

Treasury is that fiscal department of the Government which controls the payments of the public money in accordance with the votes of the House of Commons. For this purpose it issues directions to the Exchequer (q.v.). The head of the Treasury on the financial side is the Chancellor of the Exchequer: see CHANCELLOR.

The Interpretation Act, 1889, s. 12 (2), defines the expression "The Treasury" as meaning the Lord High Treasurer for the time being, or the Commissioners, for the time being, of His Majesty's Treasury.

The Lord High Treasurer represents the Treasurer, who together with the Chancellor and the Barons of the Exchequer exercised, under the Norman kings, general control over the royal revenues. See LORD TREASURER.

Treasury Bills. Under the Treasury Bills Act, 1877, the Treasury, when authorised by any other Act to raise money, may do so by means of bills (known as Treasury Bills) payable not more than twelve months after date. Such bills have superseded Exchequer bills (q.v.).

Treasury Board. See LORD TREASURER.

Treasury Chest Fund. A fund not exceeding £1,000,000, which the Treasury may employ to make advances for any public service, to be repaid out of moneys appropriated by Parliament to such service (Treasury Chest Fund Act, 1877, ss. 2, 3).

Treasury Notes. The popular title of Currency Notes (q.v.).

Treasury Solicitor. This is the abbreviated title of "the solicitor for the affairs of His Majesty's Treasury": see the Treasury Solicitor Act, 1876, which deals exhaustively with his position and powers. They are much more extensive than those of a solicitor in the ordinary sense of the word. He need not, in point of law, be a qualified solicitor (Solicitors Act, 1843, s. 47); but when acting within his powers he can perform all the functions and claim all the rights which, in ordinary cases, are peculiar to a qualified solicitor. The office has in recent years generally been held by a barrister. See DIRECTOR OF PUBLIC PROSECUTIONS.

The Treasury Solicitor is also His Majesty's Procurator-General. "Procurator" is the Latin form of "proctor." The Treasury Solicitor, *qua* Procurator-General, has now no functions to perform. The King's Proctor (q.v.) however, belongs to his department.

Treaties of Washington Act, 1922. See FOREIGN ENLISTMENT; PIRACY.

Treating. The giving or the receiving of food, drink, etc., at an election for the purpose of influencing votes. For the full definition, see the Corrupt and Illegal Practices Prevention Act, 1883, s. 1. See CORRUPT PRACTICES.

Treaty.—I. In private law, treaty signifies the discussion of terms which immediately precedes the conclusion of a contract or other transaction. A warranty on the sale of goods, to be valid, must be made during the treaty preceding the sale.

II. In public and international law, a treaty is an agreement between the governments of two States. (See STATE.) Such an agreement is, of course, not enforceable by legal proceedings. (See LAW; INTERNATIONAL LAW.) In England, the power of making treaties with foreign States is vested in the Crown as part of its prerogative; but after the Great War of 1914-18, the Crown adopted a course which had previously been quite unknown in agreeing to a treaty with France which stipulated that it, before ratification by the King, should be submitted to Parliament for approval (Anglo-French Treaty (Defence of France) Act, 1919). In some cases, however, treaties made by the Crown are not valid in the Courts of this country unless concluded under the powers of an Act of Parliament. For an instance, see EXTRADITION.

Treble Costs; Treble Damages. See COSTS; DOUBLE DAMAGES.

Trebucket. The cucking-stool (q.v.).

Trees. See ADJOINING OWNERS as to overhanging trees.

As to stealing trees see the Larceny Act, 916, s. 8 (2).

Tremagium. See HYPERAGIUM.

Tresayle. A great-great-grandfather; the randfather of a grandfather. The writ of resayle was identical with the writ of cosinge: see COSINAGE. Compare AIEL; BESAIEL.

Trespass is a generic name for various torts, nost of them being distinguished by the Latin vords formerly used in the appropriate vrits.

Trespass *vi et armis* ("with force and rms") includes injuries to the person accomanied with actual force or violence, as in the ase of battery and imprisonment, and the ct of entering on another man's land without awful authority. This latter kind of trespass in which the "force" is implied or fictitious) s also called trespass *quare clausum fregit*, because he [the defendant] broke or entered nto the close" or land of the plaintiff. Not nly entering a man's land, but also the acts f allowing cattle to stray into his land, or driving nails into his wall, or digging the minerals under his land, constitute trespass *uare clausum fregit*. To enable a person to ring an action of trespass "*qu. cl. fr.*," he nust have actual possession of the land. Therefore, an heir of land cannot maintain an ction for a trespass committed before he took ossession by entry. See POSSESSION.

Where a person has by law the right to nter on the lands of another for a certain purose, and, after entry, he does something vhich he is not entitled to do, then he is considered a trespasser *ab initio*, or as if his ntry had been unlawful. A continuing trespass is one which is permanent in its nature; s, where a person builds on his own land so hat part of the building overhangs his neighbour's land.

Another variety of trespass *vi et armis* is respass *de bonis asportatis*, for the wrongful aking of chattels. Injuries committed to hattels while in the owner's possession *e.g.*, by poisoning his cattle) are also classed nder the head of trespass *vi et armis*.

As to trespass on the case, see ACTION ON HE CASE. The principal action for trespass n the case, having a specific name, is trover q.v.), but the class also includes a large umber of torts having no specific name, specially those arising from negligence, fraud, tc.

Trespass gives rise to a right of action for lamages. See TORT.

Trial is that step in an action, prosecution or ther judicial proceeding, by which the questions of fact in issue are decided. See FACT; ISSUE; QUESTIONS OF LAW.

I. In actions in the High Court, there are five principal modes of trial, *viz.*, trial before a judge and jury, before a judge alone, before a judge with assessors, before a referee alone, and before a referee with assessors (Ord. 36, r. 2).

Trial before a judge and jury (formerly called trial *per pais*) is a mode of trial which was formerly peculiar to the superior Courts of common law. By the Chancery Amendment Act, 1858, power was given to the Court of Chancery to summon juries to try questions of fact; but the power was seldom exercised. Now, causes or matters assigned to the Chancery Division are tried by a judge without a jury unless the Court or a judge otherwise order (Ord. 36, r. 3); and if a trial by jury be ordered it takes place in the King's Bench Division. In both the Admiralty and the Chancery Divisions trial without a jury may be ordered of any issue which before the Judicature Acts could, without consent of the parties, be so tried (*ib.*, r. 4). And any case involving prolonged examination of documents which cannot be conveniently made by a jury may be ordered to be tried without a jury (*ib.*, r. 5). But with these exceptions (which are few in number) the right of trial by jury is now governed by the Administration of Justice Act, 1920, s. 2, and the rules made thereunder. That section provides that where in any action or matter whatsoever in the High Court, "the Court or a judge is satisfied" on application made by either party, that the action, etc., "cannot be as conveniently tried with a jury as without a jury" then an order may be made for trial without a jury, provided, however, (1) that no such order shall be made without the consent of both parties in any case in which fraud, libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage is involved; and (2) that the right of parties to divorce proceedings to trial by jury of contested issues of fact, and the right of an heir-at-law to such trial when he is a party to a probate action are both to be preserved. The section further provides for the making of rules of Court to give effect to it: and, accordingly, as from 1st March, 1922, rules 2 and 6 of Order 36 have been annulled and new rules substituted.

The Court of Appeal will not review the decision of a master or a judge as to whether a case can or "cannot be as conveniently tried with as without a jury."

A trial by jury consists of the operation of calling and swearing the jury (see JURY; CHALLENGE), of a speech by the counsel for the plaintiff (see OPEN), the examination, cross-examination and re-examination of his witnesses: a speech by the counsel for the defendant, followed by the examination, cross-examination and re-examination of his witnesses, and a summing up of their evidence by him: the reply or speech by the plaintiff's counsel: occasionally a "view" (q.v.) by the jury; the summing up of the whole case by the judge for the jury: and, lastly, the jury's verdict. (See the various titles; also RIGHT TO BEGIN.) It sometimes happens, however, that the trial comes to a premature end by the non-appearance of one of the parties, or by nonsuit (q.v.), or the withdrawal of a juror (q.v.). If the plaintiff does not appear at the trial, the action is dismissed; if the defendant does not appear, the plaintiff must prove his case, so far as the burden of proof lies upon him. A verdict or judgment so obtained may under Ord. 39 be set aside by the Court of Appeal upon terms. Sometimes a trial is ordered to take place before several judges and a jury: this was formerly called a trial at bar (see BAR), as opposed to the ordinary trial, which is sometimes called, by way of distinction, "trial at *nisi prius*." See NISI PRIUS.

Where the judge who tried the action has misdirected the jury in point of law, or admitted evidence which ought to have been refused, or rejected evidence which ought to have been admitted, and by so doing has caused a miscarriage of justice, or where the jury have found against the weight of the evidence, or given excessive damages, and generally wherever it is clear that a fair trial has not been had, the party aggrieved may obtain an order for a new trial on motion made for that purpose. The whole proceedings on the trial are then gone through afresh, and, if the case is again not properly tried, a third trial may be ordered, and so on (see Ord. 39).

The other modes of trial are similar to trial before a judge and jury, except that the calling and swearing of the jury, and the summing up by the judge, are necessarily absent. Where the trial is before a judge alone, the evidence is sometimes taken by affidavit. See AFFIDAVIT; EVIDENCE.

Admiralty actions involving nautical questions, *e.g.*, actions of collision, are generally tried before a judge with Trinity Masters sitting as assessors (q.v.).

As to trial before a referee, see ARBITRATION.

The following kinds of trial are obsolete:— Trial by the record was where issue is joined as to the existence of a particular record (q.v.): such an issue was tried by the Court itself on production of the record. Trial by certificate was where a fact could only be proved by the certificate of a public official: thus, the custom of the City of London in respect of foreign attachment was proved by the oral certificate of the Recorder.

II. In County Court actions, the plaintiff appears in Court on the return day of the summons, and the defendant must appear to answer the plaint. On answer being made in Court, the judge proceeds to try the cause in a summary way: in small cases the plaintiff and defendant are sworn and make their statements to the judge, being asked questions by him when necessary; but in cases where counsel or solicitors are employed, and a jury summoned, the course of proceeding resembles that on a trial in the High Court.

III. In criminal cases, the trial of a person accused of a crime usually takes place before a judge and petty jury at the assizes, or at the Central Criminal Court, or at bar, that is, by a jury before three or more judges of the King's Bench Division: this last mode of trial is only used in important cases. (See KING'S BENCH.) The steps on a criminal trial are substantially the same as those above described, substituting "prosecutor" for "plaintiff," and "prisoner" for "defendant." (See also ACQUITTAL; CONVICTION.) The obsolete modes of trial by ordeal, by the corsned, and by battle, will be found described under those titles.

In cases of treason and felony, a nobleman is entitled to be tried by his peers, that is, by members of the House of Lords. See CERTIORARI; LORD HIGH STEWARD; HOUSE OF LORDS.

Trial, Writ of. The statute 3 & 4 Will. 4, c. 42, s. 17, empowered the Superior Courts to order that the issues joined in any action of debt for not more than £20 should be tried before the sheriff or any judge of any inferior Court of the county in which the action had been brought, and provided that effect should be given to such order by the issue of a writ known as a writ of trial. This enactment was repealed in 1867 by s. 6, the statute 30 & 31 Vict. c. 142, as being unnecessary in view of the jurisdiction which the County Court had by then acquired.

Tribunal of the Hague. See HAGUE CONFERENCE.

Triding; Tridingmote. The trithing or triding was the same as the riding (q.v.), and the tridingmote was the Court of the riding.

Triers or **Triors** are persons appointed by the Court (when necessary) to decide challenges to jurors, where no jurors have been already sworn on the jury. As soon as two jurors are sworn, they decide all subsequent challenges. Challenges to the array may be tried by the Court itself. See CHALLENGE; ELISORS.

Trinity House. The Merchant Shipping Act, 1894, s. 742, provides that for the purposes of that Act "'The Trinity House' shall mean the Master, Wardens, and Assistants of the Guild, Fraternity, or Brotherhood of the Most Glorious and Undivided Trinity and of St. Clement, commonly called 'The Corporation of the Trinity House of Deptford Stroud.'" As a matter of fact, "The Trinity House" is, and for long has been, the title in general use. It consists of ten Acting Masters (one of whom is a retired officer of the Royal Navy, the other nine being retired officers of the Mercantile Marine) and of a number of other Masters, some of whom have been Acting Masters who have ceased to perform active duties, the rest being peers, prominent politicians and members of the Royal Family. All the Masters are known as Elder brethren.

The Trinity House received its charter from Henry VIII. in 1514. Under that and various subsequent charters and various Acts of Parliament it has been entrusted with many duties relating to pilotage (q.v.) and lighthouses, beacons and sea marks. The enactment under which it deals with lighthouses, etc., is the Merchant Shipping Act, 1894, s. 634 (1) (*a*). The actual work of the Trinity House is done by the Acting Masters.

There are also Trinity Houses at Hull and Newcastle respectively, which, under various charters and the Pilotage Act, 1913, act instead of the main Trinity House as regards pilotage in districts adjoining those towns.

Trinity House Outport Districts. This expression is defined by s. 52 (1) of the Pilotage Act, 1913.

Trinity Masters are Acting Elder Brethren of the Trinity House. If the decision of a question arising in an Admiralty action requires technical knowledge and experience in navigation, the judge or Court is usually assisted at the hearing by two Trinity Masters, who sit as assessors and advise the Court on questions of a nautical character. (See Assessor.) Trinity Masters also act as assessors of Prize Courts (Prize Rules, Ord. 16).

Trinity Sittings; Trinity Term. See SITTINGS; TERM.

Trinity Sunday. The Sunday next after Whit Sunday (q.v.).

Trink; Trinker; Trinkerman. The trink (statutes 2 Hen. 6, c. 12, s. 1; 2 Hen. 6, c. 19) was a kind of fixed net used in the tidal part of the Thames; trinker was another form of the same word; and trinker or trinkerman meant a man who worked such a net.

Trinoda necessitas. The threefold obligation. It consisted of *brighote*, *burghbote* and *expeditio* (see those titles).

No matter who held the land, the liability to the *trinoda necessitas* still attached.

Triptych. A set of three pictures or carvings, set side by side in separate compartments, the outside compartments being hinged so that they can fold in over the central one. A faculty is required for the use of a triptych in connection with the altar of a parish church.

Tristis. Under the forest laws, this meant immunity from attending and assisting one who had the right of chase.

Trithing. See TRIDING.

Tron; Trona; Tronage; Tronagium. In the time of Fleta the *trona* was the public weighing machine of a city or burgh. Such a machine was later known in Scotland as the trone, or the king's trone, but these words do not seem to have been used in England.

The charge for weighing at the *trona* was known at first as *tronagium* and subsequently as tronage.

Tronator. An officer of the City of London who weighed all the wool brought into the City. See the Book of Oaths, p. 129, edition of 1689.

Tronour. An official in charge of the tron (q.v.). In this sense the word is Scotch rather than English and does not seem to have been used south of Newcastle-on-Tyne.

In the statutes 18 Edw. 3 and 14 Rich. 2, c. 10, the tronour is mentioned along with the finder (q.v.) and other such officers: he was some kind of customs officer.

Trover. In common law practice, the action of trover (or trover and conversion) was a species of action on the case (see TRESPASS), and originally lay for the recovery of damages against a person who had found another's goods and wrongfully converted them to his own use; subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely

fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. The name "trover" is sometimes applied to an action brought for the same purpose under the present practice, though, at the present day, it is more usual in such a case to bring an action claiming delivery of the goods and damages for the wrongful detention. In an action of trover the plaintiff could recover only the value of the goods, not the goods themselves. See DETINUE; TORT; DELIVERY, WRIT OF.

Troy Weight. The name given to a measure of weight stated to have originated in the French town of Troyes. It consisted of twelve ounces to the pound.

An ounce troy now consists of 480 of the 7,000 grains which go to the imperial pound (Weights and Measures Act, 1878, s. 14). The only customary subdivision of the ounce troy is the pennyweight, twenty of which go to the ounce. There is no troy pound. As to the use of troy weight, see AVOIRDUPOIS.

Truck Acts. The Truck Act, 1831, was passed to abolish what is commonly called the "truck system." Under that system employers were in the practice of paying the wages of their workpeople in goods, or of requiring them to purchase goods at certain shops, which led to labourers being compelled to take goods of inferior quality at a high price. The Act made payment in money compulsory; and it applied to all artificers, workmen and labourers, except those engaged in certain trades, especially iron and metal works, quarries, cloth, silk and glass manufactories. It did not apply to domestic or agricultural servants. The Truck Act Amendment Act, 1887, s. 2, now, however, provides that the Act of 1831 shall apply to workmen as defined by the Employers and Workmen Act, 1875, s. 10, that is to say, to all persons (other than domestic servants) under a contract to perform manual labour. This brought in agricultural labourers, but s. 4 of the Act of 1887, provides that a contract may be made with an agricultural labourer "for giving him food, drink, not being intoxicating, a cottage or other allowances or privileges in addition to money wages."

The Truck Act, 1896, regulates the conditions under which deductions may be made from wages for fines, for bad or negligent work or injury to materials, and for materials, tools, machines, etc., supplied by the employer.

True Bill. See INDICTMENT.

True Owner. *Quoad* the Bankruptcy Act, 1914, s. 38 (2) (*c*), the "true owner" of goods in the "reputed ownership" (q.v.) of a bankrupt is the person, whether he be the legal owner, who is entitled to determine the state of things under which the bankrupt is the apparent owner.

As to the meaning of the term *quoad* bills of sale, see that title.

Trust.—I. A trust, in its simplest form, is a relation between two persons, by virtue of which one of them (the trustee) holds property for the benefit of the other (the *cestui que trust*), while as regards the rest of the world he (the trustee) is, for most purposes, absolute owner of it. The right of the *cestui que trust* to that benefit is enforceable as a personal right against only the trustee and those who have acquired interests in the trust property with notice of the trust. As between the trustee and *cestui que trust*, and those claiming under them, the *cestui que trust* is in effect beneficial owner of the trust property, either absolutely or with restrictions according to the nature of the trust. As trusts were formerly enforced only in equity, he is sometimes called equitable owner. (See OWNERSHIP; EQUITY; ESTATE.) This equitable ownership or interest is assignable, except in the case of a restraint on alienation or anticipation (see those titles), or of a discretionary trust (*infra*). By the Statute of Frauds (q.v.) all grants and assignments of trusts must be in writing, signed by the grantor or assignor. No particular form of words is required for an assignment of a trust, but it is the custom to employ the same kind of instrument and the same form of words as if the interest were legal instead of equitable.

The devolution of a trust, that is, of an equitable estate or interest in property, follows the rules of law applicable to a corresponding legal estate or interest: therefore if A holds land in trust for B absolutely, and B dies intestate, his heir (whether heir at law, or heir in gavelkind or borough-English, according to the tenure of the land), becomes *cestui que trust*, or beneficial owner, of the land; in the case of personal property, B's interest would pass to his executors, and be distributed, after payment of his debts, amongst his next of kin. (See ASSETS.) Trust property is liable to be taken in execution (see ELEGIT; EXECUTION; STATUTE OF FRAUDS), and, if the *cestui que trust* becomes bankrupt, it vests in the trustee in his bankruptcy. The ownership of the trustee, on the other hand, is not subject to his debts, does not pass to

his trustee if he becomes bankrupt, and is not liable to succession duty or to estate duty on his death.

Trusts arise either by the act of the party or by operation of law.

A. Trusts by act of the party are either express or implied.

(a) An express trust is one created by clear words: as where A gives property to B in trust for C, or otherwise expresses a clear intention that C shall have the benefit of it. A is called the author of the trust, or the settlor, testator, etc., according to the instrument by which the trust is created. As to where writing is required for the creation of trusts, see STATUTE OF FRAUDS; DECLARATION. See also SECRET TRUSTS.

(1) With reference to the completeness with which they are expressed by the author of the trust, trusts are of two classes, viz., (i) those in which the objects of the trust are completely indicated, and (ii) those in which they are not. (i) Trusts of the former class are again divisible into trusts executed and trusts executory. An executed trust is one in which the limitations of the equitable interest are complete and final; as if A conveys property in trust for C for life, and after his death in trust for D absolutely. In an executory trust the limitations of the equitable interest are intended to serve merely as minutes or instructions for perfecting the settlement at some future period; thus, a trust in marriage articles to settle land on the intended husband for life, with remainder to the heirs of the body of the husband and wife, is executory, because it contemplates a future settlement in accordance with the intention expressed by the articles, which is that such a limitation may be made as will give the husband a life estate only, with remainder to the eldest and other sons successively in tail; —the distinction is important, for if the limitations in the articles were treated as final (in other words, as an executed trust) they would, under the rule in *Shelley's Case* (q.v.), give the husband an estate tail, which would enable him to defeat the interests of the issue. (ii) A trust in which the objects are not completely indicated is sometimes called a power in the nature of a trust, or a mixture of a trust and power; in other words, a trust of which the outline only is sketched by the settlor, while the details are to be filled up by the good sense of the trustees; as if A gives property to B with power (or upon trust) to dispose of it among A's relations, then in default of a disposal by B the property will be divisible among A's next of kin. "A disposition of this kind," said the Master of the Rolls in 1807, "contains a mixture of trust and power. The trust must be exercised for relations and kindred of some description or other. The power of selection belongs to those to whom the testator has thought right to confide it. . . . If there is any person entitled to exercise the power, the trust will be for those of the relations and kindred whom such person shall select; if the power is extinct the trust is for those who answer the description of relations and kindred according to the construction this Court may put upon these words" (16 *Ves.* 43).

(2) With reference to their purposes, trusts are either public or private. "By public," says Mr. Lewin, "must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for *charitable* purposes, and indeed *public* trusts and *charitable* trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained, and to whom therefore collectively, unless under some legal disability, it is, or within the allowed limit will be, competent to control, modify or determine the trust." Public trusts are necessarily administrative (q.v.); private trusts, on the other hand, may be simple [passive] or special [active].

"The simple trust," says Mr. Lewin, "is where property is vested in one person upon trust for another, and the nature of the trust not being prescribed by the settlor, is left to the construction of law. In this case the *cestui que trust* has *jus habendi*, or the right to be put in actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances as the *cestui que trust* directs"; he is, in short, absolute equitable owner of the property. See TRUSTEE.

"The special trust," says Mr. Lewin, "is where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not, as before, a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts," or to pay the income to a given person during his life. (See SETTLEMENT.) With reference to the obliga-

tions of the trustee, special trusts are divisible into imperative and discretionary. An imperative trust is where the trustee is bound to act in the manner directed; thus, if the property is given upon trust to sell, the trustee is bound to sell. A discretionary trust is where the performance or exercise of the trust and not merely the *mode* of its exercise is left to the discretion of the trustee: as if property is given to B upon trust to apply it for the benefit of C or his wife and children during his life in such manner and so long as B in his discretion shall think best; such trusts are not unfrequently inserted in wills and settlements when it is desired to prevent an allowance given to a spendthrift and his family from being assigned by him or taken by his creditors on his bankruptcy, because, as the trust cannot be enforced against the trustee, C has no interest capable of being sold or otherwise dealt with for the benefit of his creditors. With reference to the mode in which they are to be exercised, special trusts are divisible into ministerial (or instrumental) and discretionary. "Ministerial trusts," says Mr. Lewin, "are such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; such is a trust to convey an estate to a certain person. Discretionary trusts (in the general sense of the word) are such as cannot be duly administered without the application of a certain degree of prudence and judgment; as where a fund is vested in trustees upon trust to distribute among such charitable objects as the trustees shall think fit. So a trust for sale must be considered discretionary. [See DISCRETION.] To this class belongs what is called a trust with a power annexed, where the trust itself is complete, and the power being but an accessory may be exercised or not as the trustee may deem it expedient; as where lands are limited to trustees with a power of varying the securities."

(b) An implied trust is where the intention to create the trust is inferred. Thus, if A gives property to B, "not doubting," "entreating," or "hoping" that B will employ it for the benefit of C, a trust is implied in favour of C, the execution of which C can enforce, although it is given in a precatory form. This is called a precatory trust.

An honorary trust is where A gives property to B "relying on his honour" (or using equivalent words) that he will employ it for the benefit of C. Such a trust is not legally enforceable.

B. Trusts by operation of law are such as are not declared by the party at all, either directly or indirectly, but result from the effect of a rule of equity. They are of two kinds, resulting and constructive.

A resulting trust arises where a trust is created which does not dispose of the property. Thus, if an estate is devised to A and his heirs upon trust to sell and pay the testator's debts, then the surplus of the beneficial interest constitutes a resulting trust in favour of the testator's heir. (See RESULT.) As a general rule, where in a conveyance or will the legal estate is given to a person, but no trust is expressed, and an intention can be collected that the grantee or devisee should not take the beneficial interest (as where a person purchases property in the name of another), the interest will result to the grantor, purchaser, etc.; similarly, if part of the beneficial interest is disposed of, the residue will result. (See ADVANCEMENT; CONVERSION.) Where a private trust wholly fails, and there are no heir, next of kin or other persons representing the settlor, then the whole of the trust property goes to the Crown—the realty by escheat under the Intestate Estates Act, 1884, s. 4, and the personalty as *bona vacantia* (q.v.). As to charitable trusts, see CY-PRÈS.

A constructive trust is one which the Court creates by a construction put upon certain acts of the parties: thus, when a tenant for life of leaseholds renews the lease on his own account, the law gives the benefit of the renewed lease to those who were interested in the old lease. As soon as a valid contract for the sale of land has been entered into, the vendor becomes in equity a trustee of the land for the purchaser, to whom the beneficial ownership passes. The vendor has a lien for his purchase-money, and is entitled to retain possession until he is paid; but he is accountable to the purchaser for the rents and profits, and for any wilful waste or neglect.

II. "Trust" is used in a peculiar sense to denote a mode of carrying on a business for purposes of profit. Thus a "share investment trust" is an agreement between a small number of persons (the trustees) and a comparatively large and fluctuating body of persons (generally called subscribers, certificate holders, or the like), that the trustees shall acquire and hold certain shares in companies and receive the income for the benefit of the subscribers, with power to sell any shares and re-invest the proceeds in other shares. Such an arrangement does not constitute the subscribers an association within the meaning of the Companies (Consolidation)

Act, 1908, s. 1, and therefore does not require registration, even though the subscribers exceed twenty in number unless, possibly, the trustees exceed that number.

Trustee.—I. In the strict sense of the word a trustee is a person who holds property upon trust (q.v.).

A. As to private trustees, or trustees acting under wills, settlements, and similar instruments.

Any person (whether it be a woman, married or unmarried, an alien, or an infant) or any corporation may hold property as trustee. Great inconvenience may result from an infant being a trustee; and the Court will not hesitate, if such inconvenience arises, to appoint a trustee of full age in his place. (See TRUSTEE ACTS.) Corporations (unless they be such as come within Rule 30 of the Public Trustee Rules, 1912), cannot, as a rule, hold land without the licence of the Crown, and therefore are unfit to be trustees of land; they also cannot be *cestui que trusts* of land without the licence of the Crown or statutory powers. See MORTMAIN.

The office of a trustee is a personal one, and does not necessarily devolve or pass with the trust property. If one of several trustees dies, the office devolves on the survivors; the property also passes to the survivors, trustees being always made joint tenants. (See JOINT TENANCY.) Formerly, when a sole trustee died, the property passed to his heir or devisee if it was realty, or to his personal representatives or legatee if it was personalty. This rule was altered in 1874 as regards bare trustees; and now (under s. 30 of the Conveyancing Act, 1881) when any sole trustee or mortgagee of real estate dies after the 31st December, 1881, the same shall, notwithstanding any testamentary disposition, devolve to his personal representatives as if it were a chattel real. When a new trustee was appointed in the place of the deceased, his real or personal representatives formerly had to convey the property to the new trustee by the same modes of conveyance (deed of grant, assignment, etc.) as those used in conveyances by absolute owners, and until that was done they held the property upon trust so to convey it, but they were not clothed with the office of trustee under the instrument creating the trust, unless it so provided, and therefore they could not exercise any of the powers conferred by the trust. Now, however, under s. 12 of the Trustee Act, 1893 (replacing s. 34 of the Conveyancing Act, 1881), the deed appointing a new trustee contains a declaration which vests the trust property in the new trustee or trustees, as joint tenants, as effectually as a conveyance formerly did. Trusteeship is also different from executorship. Therefore if a testator appoints A to be executor and trustee of his will, and A renounces the executorship, he remains trustee unless he executes a disclaimer of the office. See DISCLAIM; RENOUNCE.

Most instruments creating trusts contain a power of appointing new trustees: the power is generally vested either in the beneficiaries (*cestui que trusts*) or some of them, or in the trustees themselves, including the last survivor, and his executors or administrators. As regards any instrument executed after 28th August, 1860, under which there is no person having a power of appointing new trustees, and able and willing to act, a power of appointing new trustees to supply any vacancy by death, retirement, etc., was, by s. 27 of Lord Cranworth's Act (q.v.), vested in the surviving or continuing trustees or trustee or the acting executors or administrators of the last surviving or continuing trustee, or the last retiring trustee. These provisions were extended by the Conveyancing Act, 1881, s. 31; and that enactment has been replaced by s. 10 of the Trustee Act, 1893, which applies to trusts created either before or after 31st December, 1881. It therefore applies to trusts which were not within the provisions of s. 27 of Lord Cranworth's Act, by reason of their having been created before the 28th August, 1860. It contains the power and provisions which had usually been inserted before 1860 in any properly drawn will or deed creating a settlement. Under the Judicial Trustee Act, 1896, s. 1, a "judicial trustee" (q.v.), under the Public Trustee Act, 1906, s. 2 (1), the "Public Trustee," and (by force of Rule 30 of the Public Trustee Rules, 1912), any such body corporate as is mentioned in that rule may be new trustees of a settlement; the Public Trustee or such body corporate may be so appointed by anyone having power to appoint a private person as new trustee, but a judicial trustee can be appointed only by order of the Court. Bodies corporate can hold property in joint tenancy with an individual (Bodies Corporate (Joint Tenancy) Act, 1899): so also can the Public Trustee (Public Trustee Act, 1906, s. 2 (2)), but in practice he insists on having the sole management of the trust, as also indeed, do the companies which act as trustees.

As to the powers of the Court with regard to appointing new trustees and with regard

to vesting orders upon such appointment and in other cases, see TRUSTEE ACTS.

In addition to the powers given to trustees by the instruments creating the trusts, powers have been conferred on them by statute, especially by s. 13 of the Trustee Act, 1893 (replacing s. 35 of the Conveyancing Act, 1881, which itself had replaced s. 1 of Lord Cranworth's Act), giving trustees power in relation to the sale of real property. As to their statutory powers of investment, see INVESTMENT. The Trustee Act, 1893, s. 21 (which re-enacts s. 37 of the Conveyancing Act, 1881), empowers trustees to compound and compromise debts, claims, etc. Lord St. Leonards' Act, s. 31, gave trustees a statutory indemnity for losses not caused by their own acts or defaults, and a power to reimburse themselves for their expenses: it has been repealed by the Trustee Act, 1893, and is re-enacted by s. 24 of that Act. As to the power of trustees of wills to pay debts, and as to the power of trustees to apply to the Court for advice, see EXECUTOR.

If a trustee cannot safely administer a trust, he may take out an originating summons or institute an action to have it executed by the Court; and, in a proper case, the trustees or a majority of them may place the trust fund in the hands of the Court under s. 42 of the Trustee Act, 1893. If a trustee refuses or neglects to administer the trust, or is guilty of a breach of trust, or the like, any beneficiary may institute an action for the execution of the trust by the Court. (See ADMINISTRATION ACTION; EXECUTOR; DISCRETION.) The powers of trustees are suspended by the institution of a suit for the execution of the trusts, and they can only act with the sanction of the Court.

Except in cases of fraud or of trust property wrongfully retained or converted, a trustee may plead the Statutes of Limitation (Trustee Act, 1888, s. 8). Such fraud is punishable under the Larceny Act, 1916, s. 21.

Trustees are of two kinds, active and passive.

An active trustee is one who has to perform administrative duties, such as managing the trust property, receiving income and paying it over to the *cestui que trusts*, etc. The duties and liabilities of such trustees are of infinite variety; but it may be said generally that a trustee is bound to take the same care in acting for his *cestui que trust* as he would, if a prudent man, in acting for himself: and that he must not derive or attempt to derive any benefit from the trust, unless he is authorised to do so by the terms of the trust. See BREACH OF TRUST; DISCRETION; NEGLIGENCE.

A passive trustee is one in whom property is vested simply for the benefit of another person. In such a case the trustee is bound to convey the property to the *cestui que trust*, or to dispose of it as he may direct, when the time comes for the *cestui que trust* to deal with it, and in the meantime to hold it on his behalf.

When the duties of an active trustee have come to an end, or when the time for the *cestui que trust* to claim possession of the trust property has come, so that in either case the trustee is compellable to convey the property to the *cestui que trust*, or deal with it according to his directions, then the trustee is called a bare or dry trustee.

B. As to trustees acting on behalf of the public, or a section of the public, or a large body of persons. Such trustees, if they have any active duties to perform, are usually remunerated for their trouble, while ordinary trustees (*supra*) rarely are. An important example of this kind of trustee is the trustee in a bankruptcy. See TRUSTEE IN BANKRUPTCY.

When a company is intended to be formed, it is sometimes found convenient to appoint a person as "trustee on behalf of the intended company" to enter into contracts, etc., on behalf of the company, the trustee having no personal interest in them. The object generally is to enter into such arrangements for the purchase of property as may serve as a basis for the operations of the company, but so as not to be binding until the company is formed and adopts them. See FRAUD; PROMOTER; RATIFICATION.

When an issue of debentures is intended to be secured by a charge on property, trustees are frequently appointed on behalf of the holders of the bonds or stock to receive and administer the property or the income thereof for their benefit, subject to provisions contained in a document called a trust deed.

As to trustees of charities, see CHARITABLE TRUSTS ACTS; OFFICIAL TRUSTEE OF CHARITY LANDS; OFFICIAL TRUSTEE OF CHARITABLE FUNDS; SUCCESSION.

II. Trustee is also used in a wide and, perhaps, inaccurate sense to denote that a person has the duty of carrying out a transaction, in which he and another person are interested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neglect the

interests of the other. In this sense directors of companies are said to be trustees for the shareholders. The essential difference is, that a trustee owns the trust property and deals with it as principal, subject to his equitable obligation towards his *cestui que trust*, while a director is rather an agent with a limited authority; and, moreover, a director is not debarred from using for his own personal benefit knowledge which he has acquired as director.

Trustee Acts. These were the statutes 13 & 14 Vict. c. 60 and 15 & 16 Vict. c. 55, passed to enable the Court of Chancery (now the High Court of Justice, on petition presented in the Chancery Division) to appoint new trustees of a settlement, will or other instrument creating a trust, whenever a trustee's death, lunacy, conviction of felony, absence or refusal to act, or other reason, made it necessary to apply to the Court; in other words, when the power of appointing new trustees contained in the instrument, or provided by statute, could not be exercised. As regards these matters they are replaced by s. 25 of the Trustee Act, 1893, which also applies to the case of a bankrupt trustee. They also empowered the Court, where property was held upon trust by a lunatic or person of unsound mind or out of the jurisdiction of the Court, to transfer it by a vesting order (q.v.) to some other person, or to make an order appointing some person to execute a deed in the place of a trustee, so as to give it the same effect as if the trustee had executed it. The Trustee Act, 1893, ss. 26, 35, now give the Court power to make a vesting order where it has appointed a new trustee, or where the trustee is an infant or out of the jurisdiction of the Court or cannot be found, etc.; and the Lunacy Act, 1890, ss. 135-143 (as amended by the Lunacy Act, 1911, s. 1) gives the Court power to make such order in the case of a lunatic trustee. See VESTING ORDER.

"Trustee, As." See COVENANTS.

Trustee in Bankruptcy. A trustee in bankruptcy is a person in whom the property of a bankrupt is vested in trust for the creditors; his duty is to discover, realise and distribute it among the creditors, and for that purpose to examine the bankrupt's property, accounts, etc., to investigate proofs made by creditors, and to admit, reject, expunge or reduce them according to circumstances. (See PROOF.) He also has to keep various accounts of his dealings with the property, and of the course of the bankruptcy, which are audited by the committee of inspection and the Board of Trade (Bankruptcy Act, 1914, s. 92; Bankruptcy Rules, 1915, rr. 362, 364). Until a trustee is specially appointed in a bankruptcy, and during any vacancy in the office, the registrar having jurisdiction in the matter is *ex officio* trustee (Bankruptcy Act, 1912, ss. 74, 78 (4)). The appointment of the trustee is regulated by s. 19 of the Bankruptcy Act, 1914.

Trustee Relief Acts. These were the statutes 10 & 11 Vict. c. 96 and 12 & 13 Vict. c. 74, which were repealed by s. 51 and are re-enacted by s. 42 of the Trustee Act, 1893.

Tubman. A junior barrister whose place in the old Court of Exchequer was by the tub anciently used as a measure of capacity in excise cases. Except in Crown business, he took precedence in motions of all juniors, except the postman (q.v.). Like the postman, he disappeared when the Court of Exchequer ceased to exist.

Tumbril. The cucking-stool (q.v.).

Tun. A cask containing four hogsheads (see the statute 1 Rich. 3, c. 12); a measure of timber containing forty cubic feet (see the statute 12 Car. 2, c. 14); twenty hundredweight of coals (see the statute 9 & 10 Will. 3, c. 13). None of these measures are now recognised by the law.

Tunnage. See TONNAGE.

Turbary. Common of turbary is the right of digging peat for fuel upon another man's ground.

Turkey Company. The Levant Company (q.v.).

Turn. Another form of Tourn (q.v.).

Turner's Act, Sir George. The popular title of the statute 13 & 14 Vict. c. 35: it related to the Court of Chancery.

Turnpike. Turnpike roads were roads the cost of maintaining which was defrayed out of tolls levied upon passengers; turnpikes were the gates across such roads, which were opened so as to allow the passage of those who had paid toll; and the Turnpike Acts was the title of a large number of enactments for legalising the turnpike system, which originated early in the eighteenth century and came to an end before the termination of the nineteenth century. For details, see Okes' *Turnpike Laws* (2nd ed.).

Turnpike roads were generally in the nature of by-roads. The highways (q.v.) were the great arterial roads.

Turpis causa. See EX TURPI CAUSA.

Turpis est pars quæ non convenit cum suo toto (*Plow.* 161). (A part [of a deed] which

does not fit in with the rest is out of place); for EX ANTECEDENTIBUS, ETC. (q.v.), and a properly drawn deed should admit of such interpretation as will make the part consonant with the whole.

Tutius semper est errare acquietando quam in puniendo, ex parte misericordiæ quam ex parte justitiæ (2 *H. P. C.* 290). (It is always safer to err, at the instance of mercy rather than of justice.)

Twanight Geste. In Saxon times this meant a guest staying for a second night at the house of another. He, and not the host, was responsible for injuries inflicted by him on a third person. Compare THIRD NIGHT, ETC.

Twelfhinde. In Anglo-Saxon law this meant persons whose property was valued at twelve hundred shillings or upwards.

Twelfth Day. The Epiphany (q.v.).

Twelve-day Writ. The popular title for the writ issued in pursuance of Keating's Act (q.v.). The plaintiff was entitled to judgment unless the defendant within twelve days from service obtained leave to defend.

Twyhinde. In Anglo-Saxon law this meant those whose property was worth two hundred shillings but did not exceed twelve hundred shillings.

Tymborella. The tumbril (q.v.).

U

Uberrimæ fidei (Latin = "of the fullest confidence"): A contract is said to be *uberrimæ fidei* when the promisee is bound to communicate to the promisor every fact and circumstance which may influence him in deciding to enter into the contract or not. Thus a policy of marine insurance is a contract *uberrimæ fidei*. (See INSURANCE.) And a barrister moving the Court *ex parte* is under a strict obligation of *uberrima fides*.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest. (Where anything is granted, that is also granted without which the thing itself is not able to exist.) This is merely another version of CUICUNQUE, ETC. (q.v.)

Ubi cessat remedium ordinarium ibi decurritur ad extraordinarium (4 *Rep.* 93). (When the ordinary remedy fails, then recourse is had to the extraordinary remedy.) But this maxim is not law. It was quoted in support of the contention that where the action of debt —which was an ordinary remedy—and an action on the case—which was an extraordinary remedy—both lay, then the plaintiff could bring only the action of debt; but the King's Bench held that the plaintiff could avail himself of whichever of the remedies he chose.

Ubi damna dantur, victus victori in expensis condemnari debet (2 *Inst.* 289). (Where damages are given, the losing party ought to pay the costs of the victor.) This maxim is taken from the Roman law (*C.* 3, 1. 13). Quoted by Coke in his commentary on the Statute of Gloucester, c. 1, which made costs payable to anyone recovering damages.

Ubi eadem ratio ibi idem jus (*Co. Litt.* 191, 232). (Like reasons make like law.) Compare DE SIMILIBUS, ETC.

Ubi jus ibi remedium. (Where there is a right, there is a remedy.) This is a maxim analogous to *Lex semper dabit, etc.* Compare DAMNUM SINE INJURIA, ETC.

Ubi lex aliquem cogit ostendere causam necesse est quod causa sit justa et legitima (2 *Inst.* 269). (Where the law compels a man to show cause, it is incumbent that the cause be just and lawful.) This is an obvious truism.

Ubi lex non distinguit, nec nos distinguere debemus (7 *Rep.* 5). (We ought not to distinguish where the law does not do so.) Coke cites the maxim as a warning against dividing allegiance into kinds other than those recognised by the law. Compare NEMINEM OPORTET, ETC.

Ubi non est principalis non potest esse accessorius (4 *Rep.* 43). (Where there is no principal, there cannot be an accessory.) Quoted by the King's Bench in support of their decision that if a principal were pardoned or "had his clergy," then no person could be arraigned as his accessory. But see ACCESSORY.

Ubi nullum matrimonium, ibi nulla dos est (*Co. Litt.* 32). (Where there is no marriage there is no dower.) And so, says Coke, the right to dower goes when there is a divorce *a vinculo*.

Ubi quid generaliter conceditur inest hæc exceptio si non aliquid sit contra jus fasque (11 *Rep.* 78*b*). (Where a grant is in general terms there is always an implied provision that it shall not include anything which is unlawful or immoral.)

Ubi verba conjuncta non sunt, sufficit alterutrum esse factum (*D.* 50, 17, 110). (Where alternative conditions are imposed it is sufficient if one or the other of them be complied with.) Compare IN DISJUNCTIVES, ETC.

Ulna ferrea. The standard ell, made of iron, which was formerly kept in the Exchequer.

Ulnage; Ulnager. Forms of alnage and alnager (q.v.) respectively.

Ultimatum. In diplomacy this means a demand the refusal to comply with which will be immediately followed by war with the nation which refuses.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam (*Co. Litt.* 322). (Effect is to be given to the last will of a testator according to his true intention.) Compare MENS TESTATORIS, ETC.; BENIGNÆ, ETC.

Ultimogeniture. A suggested modern synonym for borough-English (q.v.).

Ultra vires, in the law of corporations, is used in two senses.

I. A contract or similar act is said to be *ultra vires* (that is to say, outside the powers) of a corporation when it purports to be entered into or done in pursuance of the powers conferred on the corporation, but is really beyond them. Thus, if a company is incorporated for the purpose of constructing a railway, it cannot, under the powers thereby conferred on it, construct a harbour, and any act done in the name of the company with that object is wholly void, even if sanctioned by all the members of the company: *à fortiori*, therefore, a majority of the shareholders cannot bind a dissentient minority by any such act. But the doctrine does not apply to those things which are fairly incidental to what the company is empowered to do, although they may not be expressly authorised.

The term "*ultra vires*" is used in another sense to signify that a certain act is not void as being beyond the powers of the corporation, but that it is not binding on the members who dissent from it because it is contrary to some provision, express or implied, for the protection of the shareholders; on this principle, if a company, being possessed of funds appropriated for a certain purpose, applied them to another purpose within their general powers, that appropriation would be *ultra vires* and only binding on the shareholders who consented to it.

II. "*Ultra vires*" is also sometimes applied to an act which, though within the powers of a corporation, is not binding on it because the consent or agreement of the corporation has not been given in the manner required by its constitution. Thus where a company delegates certain powers to its directors, all acts done by the directors beyond the scope of those powers are *ultra vires*, and not binding on the company, unless it subsequently ratifies them. An act which is *ultra vires* in the primary sense of the word is incapable of ratification.

Where a corporation acts *ultra vires* the remedy for a member is injunction; for a stranger who has suffered injury the like remedy is available; and the Attorney-General can always take proceedings, even though no person has suffered injury.

Umpirage. The performance of the duties of an umpire: also used formerly as a synonym for arbitration.

Umpire. When there is a reference by consent out of Court to two arbitrators, they have, under s. 2 and Sch. I. of the Arbitration Act, 1889, power (unless the submission otherwise provides) to appoint an umpire, that is to say, a person who is to make the award if the arbitrators cannot agree.

Una cum omnibus aliis. (Along with all the other things.) A form used in the granting part of old conveyances to add something to what has been already described.

Unborn Persons. See IN VENTRE SA MÈRE; PERPETUITY.

Uncertainty. In the law of wills, the general rule is that where a testator has so expressed himself that it is impossible to ascertain what his intention was, the gift or provision so made is void for uncertainty. Thus, a will consisting merely of these words, "I leave and bequeath to all my grandchildren, and share and share alike," is too uncertain to be operative, although it may be conjectured that the word "all" was meant to precede the word "to."

In pleading, the general rule is that whatever is alleged must be alleged with certainty. An allegation suffering from the defect of uncertainty is liable to be struck out as embarrassing under Ord. 19, r. 27.

Unconscionable Bargain. See CATCHING BARGAIN.

Uncore prist. (Still ready.) Where the defence to an action was that the money had been tendered on the day that it became due, the defendant formerly pleaded *uncore prist* and brought the money into Court. Compare SEMPER PARATUS.

Unde nihil habet. See DOWER, WRIT OF.

Underlease; Underlessor; Underlessee. An underlease is a lease granted by a lessee or tenant for years; in speaking with reference to the underlease he is called the underlessor, and the person to whom the underlease is granted is called the underlessee. As the underlessee is not liable to the original lessor on the covenants, etc., of the original lease, a mortgage of leaseholds is generally made by

underlease, and not by assignment. See MORTGAGE.

Another common instance of an underlease is where land is let on building lease, and the lessee grants underleases of the houses erected by him. See RENT.

On forfeiture of the original lease, an underlease was formerly determined; but now, under s. 4 of the Conveyancing Act, 1892, the Court may in such a case make an order vesting in the underlessee the premises comprised in the underlease for any term not exceeding the term of the underlease upon such conditions as to payment of rent, etc., as the Court may deem fit.

See ASSIGNMENT; LEASE; FORFEITURE.

Undertaking.—I. In the primary sense of the word, an undertaking is a promise. In the old books "undertaker" means a promisor.

"Undertaking" is frequently used in the special sense of a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the Court or the opposite party. Thus, where an *interim* or *ex parte* injunction is granted, the Court generally requires the plaintiff to give an undertaking as to damages; that is, he must undertake that if it should subsequently turn out that he was not entitled to the injunction, and that its operation has caused injury to the defendant, he will pay to the defendant damages for the injury so sustained.

So, if an application is made for an injunction, and the defendant asks that it may be adjourned, he is generally required to give an undertaking not to commit the acts complained of in the meantime; if it is a question of infringement of a patent or the like, he sometimes undertakes to keep an account of all articles made or sold by him during the period of the adjournment.

An undertaking may be enforced by attachment, or otherwise, in the same manner as an injunction.

An undertaking to appear in an action is a promise by a solicitor that he will enter an appearance for his client; such an undertaking is given when a solicitor accepts service of a writ of summons in order to save his client the annoyance of personal service. (See SERVICE.) It is enforceable by attachment (Ord. 12, r. 18).

II. In the Lands Clauses Consolidation Act, 1845, the Companies Clauses Act, 1845, and similar Acts, applying to companies incorporated for the construction of railways, docks and similar works, "undertaking" means the works or undertaking, of whatever nature, which are authorised by the special Act incorporating the particular company. The question what is included in the "undertaking" of a company principally arises in cases where a company has created a mortgage or charge on its undertaking to secure debentures, or the like. The wording of the instrument creating the charge will determine whether the charge operates only on such property as was in existence at the date of its execution or whether it operates on all the property and revenues of the company, as a going concern, at the time when the security requires to be enforced. See DEBENTURE; SECURITY.

Under-Treasurer of England. This officer, who is mentioned in the statute 39 Eliz. c. 7, was the principal assistant of the Treasurer, and acted in that office when a vacancy occurred. See TREASURY.

Underwriter is a person who joins with others in entering into a marine policy of insurance as insurer. Except where an insurance is effected with a company, a policy of marine insurance is generally entered into by a number of persons, each of whom makes himself liable for a certain sum, so as to divide the risk; they subscribe or underwrite the policy in lines one under the another, and hence to subscribe a policy is sometimes called "taking a line." Policies are usually effected through brokers. See INSURANCE; POLICY; ADJUSTMENT.

Undeveloped Land Duty. See LAND VALUES DUTIES.

Undischarged Bankrupt. See BANKRUPT; DISCHARGE. As to the protection of persons who acquire property from an undischarged bankrupt *bona fide* and for value, even with notice of his bankruptcy, see s. 47 of the Bankruptcy Act, 1914; as to transactions without notice, see PROTECTED TRANSACTIONS; and as to various offences by an undischarged bankrupt, see ss. 154, 155 of the same Act.

Undres. Used by Fleta as meaning persons not yet of the age to bear arms.

Undue Influence. The equitable doctrine of undue influence is that where a person enters into an agreement or makes a disposition of property under such circumstances as to show or give rise to the presumption that he has not been allowed to exercise a free and deliberate judgment on the matter, the Court will set it aside. Such a presumption chiefly arises in cases where the parties stand in a relation implying mutual confidence; *e.g.*, parent and child, guardian and ward, trustee and *cestui que trust*, legal adviser and client;

but it may be rebutted by showing that the transaction was in fact reasonable and entered into in good faith.

Where a person is induced to execute a will by undue influence, it is liable to be invalidated, or at least so far as the undue influence extends. Such cases chiefly arise where a testator is in feeble health, bodily or mentally, and therefore liable to be influenced by those near him. The burden of proving undue influence is always on the party alleging it.

Undue influence at parliamentary, municipal and local government elections is where anyone interferes with the free exercise of a voter's franchise, by violence, intimidation or otherwise. It is a misdemeanour. See CORRUPT PRACTICES.

Unemployed Workmen Act, 1905. This Act (which was of temporary duration but which has been continued by various Expiring Laws Continuance Acts) is that under which Distress Committees (q.v.) and the Central Body (q.v.) are constituted.

Uniformity, Acts of. These are the statutes popularly known as the Book of Common Prayer Act, 1548, the Uniformity of Common Prayer, etc., Act, 1551-2, the Act of Uniformity, 1558-9, and the Book of Common Prayer Act of Uniformity, 1662. They are the statutes 2 & 3 Edw. 6, c. 1; 5 & 6 Edw. 6, c. 1; 1 Eliz. c. 2; and 14 Car. 2, c. 4.

The first of them (s. 2) makes it compulsory to use the Prayer Book (q.v.) in all churches and makes clergymen liable to various punishments (running up to imprisonment for life in the case of a third offence) who use any service not found in the Book. See PRAYER BOOK.

Uniformity of Process Act. The statute 2 Will. 4, c. 39. See BILL OF MIDDLESEX; QUO MINUS.

Union. In the poor law, this means "any parish or union of parishes in which there is a separate Board of Guardians" (Interpretation Act, 1889, s. 16).

In ecclesiastical law, a union consists of two or more benefices which have been united into one benefice. Such a union may be made under the Pluralities Act, 1838, passed "to abridge the holding of benefices in plurality," and amended by the Pluralities Act, 1850; and under the Union of Benefices Act, 1860 (passed in substitution for the statute 18 & 19 Vict. c. 127, "to make better provision for the union of contiguous benefices in cities, towns and boroughs," and amended by the Union of Benefices Act Amendment Act, 1871), or under the Union of Benefices Act, 1919.

As to the union of parishes, see PARISH.

Unite. See SILVER COINS.

Unity of Interest is applied to joint tenants, to signify that no one of them can have a greater interest in the property than each of the others, while, in the case of tenants in common, one of them may have a larger share than any of the others. See UNITY OF POSSESSION.

Unity of Possession, in the proper sense of the word, is where a piece of land which is subject to an easement, profit à prender, rent, or similar right, comes into the possession of the person entitled to the easement or other right. At the present day, "unity of possession" is applied only to cases where the possession is temporary: as where the owner of land subject to an easement takes a lease of the dominant tenement, so that the easement is suspended by unity of possession during the lease; or where the owner of a rent disseises the tenant of the land, out of which it issues, so that the rent is suspended by unity of possession. In the old books, "unity of possession" has a wider sense, and includes what is now more commonly called "unity of seisin" (q.v.).

As applied to joint tenants, tenants in common, etc., "unity of possession" is sometimes used to signify that they have an undivided possession. This use of the term seems to have been invented by Blackstone.

See JOINT TENANCY; TENANCY IN COMMON; PRIVITY.

Unity of Seisin is where a person seised of land which is subject to an easement, *profit à prendre*, or similar right, also becomes seised of the land to which the easement or other right is annexed. The term is usually applied to cases where the seisin is that of a tenant in fee simple, and is equally high or "perdurable" in both pieces of land, so that the easement or other right is extinguished by the unity of seisin: as where a tenant in fee simple of land, subject to an easement, acquires an estate in fee simple in the dominant tenement. But if one piece of land is held by a conditional or determinable estate, then the unity of seisin is insufficient to work an extinguishment. See UNITY OF POSSESSION.

Unity of Time is applied to joint tenants, to signify that the estate of each of them must arise at the same time: that is, one cannot take his share first, and then another come in after him. This rule, however, does not

apply to estates created under the Statute of Uses, or by will. See UNITY OF INTEREST; UNITY OF POSSESSION.

Unity of Title is applied to joint tenants, to signify that they hold their property by one and the same title, while tenants in common may take property by several titles. See UNITY OF INTEREST; UNITY OF POSSESSION.

University Courts. The Universities of Oxford and Cambridge from a very early date exercised, through the courts of their chancellors, a jurisdiction both civil and criminal, the jurisdiction being derived partly from numerous royal charters, which were confirmed by the statute 13 Eliz. c. 29, and partly, in the case of Cambridge, from the Bishops of Ely, and, in the case of Oxford, from the Bishops of Lincoln.

The Chancellor's Court of the University of Cambridge has fallen into abeyance, except as regards disciplinary matters, since the enactment of the Cambridge Award Act, 1856, 19 & 20 Vict. c. xvii., which by s. 18 excludes from its jurisdiction all actions to which any person not a member of the University is a party and all criminal proceedings against any such person.

The Chancellor's Court of the University of Oxford is still active. Its ecclesiastical jurisdiction is obsolete; its functions in connection with probate were abolished by the Oxford University Act, 1860, s. 2; there is doubt as to whether it can exercise now the criminal jurisdiction which it formerly had in all cases (except treason, felony or mayhem, as to which see HIGH STEWARD), arising within the area of its jurisdiction, in which a resident member of the university was either prosecutor or defendant; but its civil jurisdiction is still exercised. That jurisdiction is exclusive, it extends to all forms of action (other than actions relating to freehold) no matter what amount may be involved, and it extends to all parts of England. Thus in 1886 it was held that the court had exclusive jurisdiction in an action for libel, where the alleged libel was published in London by a member of the university, and the plaintiff had never been in any way connected with the university or the city of Oxford. The vice-chancellor or commissary of the university or his deputy presides over the court, which is held once a week. The deputy must now be a barrister of five years' standing. Procedure is regulated by the Rules of the Vice-Chancellor's Court of the University of Oxford (see S. R. and O., Rev., Vol. VI., Inferior Courts (England)).

See also SPINNING HOUSE; JURY.

Unlawful. "Unlawful" and "illegal" are frequently used as synonymous terms, but in the proper sense of the word, "unlawful," as applied to promises, agreements, considerations and the like, denotes that they are ineffectual in law because they involve acts which, although not illegal (that is to say, positively forbidden), are disapproved of by the law, and are therefore not recognised as the ground of legal rights, either because they are immoral (q.v.), or because they are against public policy. (See POLICY.) It is on this ground that contracts in restraint of marriage or of trade are generally void. As a general rule, an unlawful agreement cannot be enforced, or set aside, nor can money paid or property delivered under it be recovered back: *potior est conditio defendentis* (q.v.).

Unlawful Assembly. See ASSEMBLY.

Unliquidated is that which is not ascertained. See DAMAGES; JUDGMENT; LIQUIDATED; WRIT OF SUMMONS.

Unnatural Crimes. The same as abominable (q.v.) crime.

Unques prist. (Still ready.) The same as UNCORE PRIST (q.v.).

Unseaworthy. See SEAWORTHINESS.

Unsound Mind. As to persons of unsound mind, see IDIOCY; INSANITY; LUNACY; LUNATIC; MENTAL DEFICIENCY; NON-COMPOS MENTIS.

Unumquodque eodem modo, quo colligatum est, dissolvitur (*Grounds of Law*, 507). (Everything is loosed in the same way as it was bound.) Compare EODEM LIGAMINE, ETC.; EODEM MODO QUO QUID, ETC.

Upper Bench. See BANCUS SUPERIOR.

Urari. A drug producing immobility, but not insensibility. It is not an anæsthetic for the purposes of the Cruelty to Animals Act, 1876, s. 5.

Urban Sanitary Authorities. See SANITARY AUTHORITIES.

Ure means operation or effect. To put in ure, therefore, is to put in operation. See ENURE.

Urgency Order. This is a means, under the Lunacy Act, 1890, s. 11, by which a person not being a pauper can be provisionally detained for seven days as a lunatic, in order to secure his own welfare or the safety of others. It is signed by a relative and must be supported by one medical certificate (*ib.*). See RECEPTION ORDER; SUMMARY RECEPTION ORDER.

Usage is a uniformity of conduct on the part of two or more persons in respect to certain matters of common interest. Hence Coke says, in speaking of custom and prescription,

" as for usage, that is the efficient cause or rather the life of both; for custom and prescription lose their being, if usage fail " (*Co. Cop.* § 33). See CUSTOM; PRESCRIPTION.

Usance signifies the time in which all bills of exchange between this country and a foreign country were formerly payable. The time varied for different countries. Thus, a usance between this country and Venice being three calendar months, a bill drawn on Venice at two usances and dated the 1st January, would fall due on the 1st July, subject to the allowance of days of grace. The practice of drawing bills at usances is quite obsolete, the same result being attained by specifying the time for which the bill is to run, but the term " usance " is still employed to signify the period for which bills on a foreign country are by the practice of merchants almost invariably drawn.

Use. There are two words " use " in law, which though spelled alike are etymologically and historically distinct. It is of importance to distinguish clearly between them.

I. In law, as in ordinary language, " use " denotes the act of employing a thing: thus, to cultivate land, to read a book, to inhabit a house, is to use those things. The word in this sense is derived from the Latin *usus* (use).

In the case of corporeal things, use is one of the modes of exercising ownership. (See OWNERSHIP; USE AND OCCUPATION.) In the case of incorporeal things, use is a mode of acquiring and retaining certain rights. (See ENJOYMENT.) Thus, if A publicly makes use of his name or some peculiar word or token (not being a trade-mark in the strict sense) in connection with his trade or occupation, he acquires the right to prevent other persons from using that name, word or token in such a way as to induce the public to believe that their business is carried on by A, and loses that right so soon as he discontinues the use. In the case of trade-marks, registration is substituted for public user as a mode of acquiring title. See TRADE-MARK; PUBLICI JURIS.

II. Use, as the word is employed in conveyancing, is derived from the Norman-French *oes*, which itself was derived from the Latin *opus* (benefit). The word, in fact, literally means " benefit "; thus, in an ordinary assignment of chattels the assignor transfers the property to the assignee for his " absolute use and benefit." In the expressions " separate use," " superstitious use," and " charitable use " (q.v.), use has the same meaning. More often, however, " use " has a technical meaning which can only be explained historically.

Before the year 1536, if one man (A) conveyed land by feoffment (then almost the only mode of conveyance) to another (B), with the intention, express or implied, that B should not hold it for his own benefit, but for the benefit of a third person (C), or of A himself, then B was said to hold the land " to the use," that is, for the benefit, of C or A. In the Courts of common law the feoffee to uses (B) was looked upon as the owner of the land for almost all purposes, the seisin or legal estate being in him. In the Court of Chancery, on the other hand, he was looked upon as merely the nominal owner; he was bound to allow the *cestui que use* (C) to have the profits and benefit of the land and to deal with it as he pleased. C was therefore the equitable or beneficial owner of the land. The " use " or beneficial ownership was treated like an estate, and descended on the intestacy of the *cestui que use* to his heir in the same way as the land would have done. A use was also devisable by will, although the land was not.

The effect of a conveyance to uses was twofold. First, it enabled interests in land to be created and transferred with a flexibility and secrecy unknown to the common law: this effect of uses still exists (*infra*). Secondly, it enabled the owners of land to evade certain inconvenient incidents of common law ownership, especially escheats, forfeitures and other feudal obligations. After several attempts to prevent these effects by various Acts of Parliament, the statute known as the Statute of Uses was passed (27 Hen. 8, c. 10). This statute in effect enacts that where any person is seised of any lands or other hereditaments to the use, confidence or trust of another, the latter shall be in lawful seisin, estate and possession of the lands for the same estate as he had in the use, and that the estate of the feoffee to uses shall be deemed to be in the *cestui que use*. The effect of this Act was to convert uses into possession, or to make the *cestui que use* legal instead of equitable owner. The result is that if, since the passing of this statute, land is conveyed to A and his heirs to the use of B and his heirs, so that A acquires the seisin of the land, then the statute is said to execute the use by turning it into a legal estate; the seisin passes out of A and vests in B, who thus becomes legal owner of the land in fee simple. See SCINTILLA JURIS.

All estates which before the statute would have been good in equity and to which the statute applies are, since the statute, good estates in law.

It will be observed that the statute only applies to cases where one person is seised of land or other hereditaments to the use of another. If, therefore, A is possessed of a term of years or a chattel, or is in *quasi*-seisin of copyhold land (all of which are incapable of true seisin), to the use of B, the statute does not execute this use, and the legal estate remains in A. The statute also does not execute a second use, or a "use upon a use," nor does it execute active uses, or uses which impose some active duty on the grantee. If, therefore, land is conveyed to A to the use of B to the use of C (which is a use upon a use), only the first use is executed. B becomes seised of the land in accordance with the statute, but he holds it to the use of C as if the statute had never been passed. Again, if land is conveyed to A to the use (or upon trust) to pay over the rents and profits to B, this use is not executed, and therefore the legal estate remains in A.

Hence uses are of two kinds, uses at common law, or those which remain unaffected by the statute, and uses which operate under the statute.

A. Uses at common law include (*a*) all uses of leasehold and copyhold land and chattels, and (*b*) uses of freehold land or other hereditaments which are not executed by the statute because they are either "uses on uses" or active uses. A use at common law is now seldom created under that name, almost the only instance being where a copyhold tenant surrenders his land to the lord to the use of some other person; here the lord is merely a trustee or instrument for carrying the intended alienation into effect. When lands or chattels are conveyed to a person to be held by him for the benefit of another, the word "trust" is now always used. See TRUST.

B. Uses which operate under the statute are those declared of land held by a freehold tenure for an estate of freehold, or of rents, services and most other hereditaments, except those (such as easements and profits à prendre) of which the enjoyment is inseparable from the possession. They are of the following kinds:

(1) Expressed or implied. If A conveys land to B and his heirs to the use of C for life, without more, then the land vests in C for an estate for life, and the reversion in fee after C's estate results or returns to A, because it is not otherwise disposed of. Here the use to B is an express use, and the use to A is an implied or resulting use.

(2) Executed or executory. An executed use is one which takes effect immediately, as where land is conveyed to A and his heirs to the use of B and his heirs. An executory use is one which is to take effect at some future time. Executory uses are of four kinds. (*a*) A springing use is one which is limited so as to commence *in futuro*, independently of any preceding estate; as where land is conveyed to A and his heirs to the use of B and his heirs from to-morrow or on the death of C. Such a use does not take effect in derogation of any estate except that which results to the grantor or remains in him in the meantime. (*b*) A shifting or secondary use is one which is limited so as to shift from one person to another on the happening of a given event; in other words, such a use takes effect in derogation of a preceding use; as where land is conveyed to A and his heirs to the use of B and his heirs, with a proviso that when C returns from Rome the land shall be to the use of C and his heirs. (See EXECUTORY INTERESTS; LIMITATION.) (*c*) Uses which are limited or declared under powers. (See POWER.) (*d*) Future or contingent uses, being those which are limited to take effect as remainders: thus, if land is conveyed to A and his heirs to the use of B (a bachelor) for life, and after his death to his eldest son, this is a contingent use.

At common law, a person could not make any conveyance to himself, so that if A wished to convey property to himself and B jointly, he was obliged to make a conveyance to some third person, C, and then C made a re-conveyance to A and B jointly. The Statute of Uses made it possible to evade this rule in the case of freehold estates in land, because if A, the owner of land, conveyed it to C, to the use of A and B and their heirs, the statute executed the use, and at once vested the land in A and B for a joint estate in fee simple. The same method is availible if A wishes to convey land to B in fee simple, reserving to himself a life estate, or if A wishes to convey land to his wife. As the Statute of Uses does not apply to leaseholds or other chattels, it became necessary to pass s. 21 of the Law of Property Amendment Act, 1859, enabling any person to assign personal property to himself jointly with another. In conveyances executed after the 31st December, 1881, freehold land, or a thing in action, may be conveyed by a person to

himself jointly with another person, by the like means by which it might be conveyed by him to another person, and may be similarly conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person (Conveyancing Act, 1881, s. 50).

Formerly a thing could not be granted by way of use if the enjoyment of it was inseparable from the possession, such as annuities, ways, commons and authorities. Hence, where land was sold subject to an express reservation or exception of such rights, privileges or easements, the object had to be attained either by a re-grant, or by a declaration that the land should remain to such uses as should give full effect to the reservation or exception, and (subject thereto) to the uses declared to vest the land in the purchaser. In conveyances made after 31st December, 1881, a limitation of freehold land to the use that a person may have an easement, right, liberty, or privilege over the land operates to vest in possession in that person the easement, etc., so limited to him (Conveyancing Act, 1881, s. 62).

As to deeds to lead and declare uses, and generally as to conveyances operating under the statute, see CONVEYANCE.

Use and Occupation. A claim for use and occupation arises where a person has used and occupied the land of another with his permission but without any actual lease or agreement for a lease at a fixed rent (Distress for Rent Act, 1737, s. 14). It is sometimes said that the claim is one for damages, but this is hardly correct, for permissive occupation is not a wrongful act; the claim is really based on an implied or tacit contract to pay for the use of the land. The action does not lie against a mere wrongdoer or trespasser.

User is the same thing as "use" in the ordinary sense of the word. See USE.

User de action. This anciently meant the bringing of an action in the proper venue (q.v.).

Uses to Bar Dower. When a conveyance of land was made to a person who was married to his present wife on or before the 1st January, 1834, and he wished to prevent her right to dower from attaching to the land, it was conveyed to the following uses: (1) to such uses as the purchaser should appoint; (2) in default of appointment to the use of him and his assigns during his life; (3) in the event of the determination of that estate by forfeiture or otherwise in his lifetime, to the use of a trustee during the life of the purchaser in trust for him, with (4) an ultimate limitation to his heirs and assigns for ever. By this means the purchaser had a full power of alienation without having a greater estate in possession than an estate for life, to which the wife's dower did not attach, and the intermediate estate of the trustee prevented the remainder in fee simple from vesting in the purchaser in possession (and so becoming liable to dower) by any accidental merger of the life estate. See DOWER.

Usher. An official appointed to keep silence and order in a Court.

The full title of Black Rod (q.v.) is the Gentleman Usher of the Black Rod.

The Usher of the White Rod or Principal Usher for Scotland is connected with England to the extent only that he is entitled to be present at a coronation. Under the Walker Trust Act, 1877, 40 & 41 Vict. c. viii. (not printed), the office (which is hereditary) is vested in trustees under that Act; and when occasion arises a deputy is appointed by the sovereign.

Usucapio constituta est ut aliquis litium finis esset. (Usucaption was instituted in order that there might be some end put to legal proceedings.) The Roman "usucaption" was ownership resulting from prolonged possession.

Usura maritima. The same as *fœnus nauticum* (q.v.).

Usurpation. In the law of real property, usurpation is where a subject uses a royal franchise without lawful warrant.

In ecclesiastical law, when a stranger who has no right presents to a church, and his clerk is admitted and instituted, he is said to be a usurper, and the wrongful act which he has done is called a usurpation. To recover his presentment and possession of the advowson, the patron must bring his action within six months from the induction of the usurper's presentee (Statute Westminster II., 13 Edw. 1, c. 5). Compare NE ADMITTAS; QUARE IMPEDIT.

Usury. Originally usury had the same meaning as interest has at the present day, viz., a periodical payment in consideration of a loan. "Purchases, estates and contracts may be avoided," says Coke, " . . . by certain Acts of Parliament against usurie above ten in the hundred." Many attempts were made to evade these statutes by making the interest payable in the form of rents, annuities, etc., and in such cases the question was whether the stipulated payment was *bona fide* a rent or annuity, etc., or whether it was usury and the contract a usurious one within the

statute. Hence "usury" acquired the sense of interest above the rate allowed by those Acts of Parliament, and the Acts making all such usurious contracts void became known as the Usury Laws. They were repealed by the Usury Laws Repeal Act, 1854; but the Moneylenders (q.v.) Act, 1900, has given the Courts certain powers with regard to oppressive rates of interest (q.v.).

Utas. Octave (q.v.): see *Les estatuz del Eschekere* where "*la chise Pasche*" is translated as "The Utas of Easter."

Utfangtheft. The same as outfangtheft (q.v.).

Utile per inutile non vitiatur (*Co. Litt.* 227). (That which is useful is not marred by that which is useless.) Compare SUPERFLUA, ETC.

Uti possedetis. Literally, "as you possess." The rule known as *uti possedetis* is that under which all property, whether moveable or immoveable, not specially provided for in the treaty terminating a war is to remain in the hands of the belligerent who happened to have possession of it when hostilities ceased.

Utlagato capiendo quando utlagatur in uno comitatu et postea fugit in alium, De. A writ which anciently lay, in the words of its title, "to take an outlaw when he is outlawed in one county and afterwards flies into another county."

Utlary. The same as outlawry. It is a form of the Norman French, *utlagarie*, which itself was derived from the Anglo-Saxon, *ûtlaga*. See OUTLAW.

Utlepe. Used by Fleta as meaning the escape of a felon from prison.

Ut pœna ad paucos, metus ad omnes perveniat (*Grounds of Law*, 515). (Though few are punished, the fear of punishment affects all.) Compare IMPUNITAS, ETC.

Ut res magis valeat quam pereat (*Noy, Max.* 50). (It is better for a thing to have effect than to be made void.) This is a free translation of part of BENIGNÆ, ETC. (q.v.).

Utrum. See ASSISA DE UTRUM.

Utter. In criminal law, to utter a forged document, die or seal, etc., or counterfeit coin, is to pass or attempt to pass it off as genuine when it is known to be forged. Uttering a forged document, seal or die is in general the same offence as that of forging the same document (Forgery Act, 1913, s. 6). Uttering counterfeit money (knowing it to be counterfeit) is a misdemeanour under the Coinage Offences Act, 1861.

Utter Barristers. See BARRISTER.

Uxor non est sui juris sed sub potestate viri (*Grounds of Law*, 516). (A wife is not *sui juris* (q.v.), but is under the government of her husband.) Compare OMNIA QUAE SUNT, ETC.

V

"V." See BRANDING.

V.A. See VICTORIA AND ALBERT, ETC.

Vacantia bona. See BONA VACANTIA.

Vacant Possession. See POSSESSION; SERVICE.

Vacarius, commonly called Magister Vacarius, was a Lombard by birth. He introduced the study of Roman law into England and gave lectures on that subject at Oxford from 1149 to 1170. He compiled for the use of his students, a digest of Justinian which was popularly known as the *Liber pauperum*: an almost complete copy of this manuscript is preserved at Worcester.

Vacation.—I. The vacations are the periods of the year during which the Courts and chambers of the Supreme Court of Judicature are closed for ordinary business. There are, however, certain kinds of business which may be transacted during vacation (*e.g.*, applications for injunctions, for extension of time, etc.); and for this purpose two vacation judges and a staff of officials attend in Court periodically during the vacations (Ord. 63, r. 11). Provision is made by Ord. 63, r. 4 (2) (3), for the trial or hearing during the Long Vacation of urgent causes, actions or matters in the King's Bench Division.

The vacations are four, namely, the Easter Vacation, commencing on Good Friday and ending on Easter Tuesday; the Whitsun Vacation, commencing on the Saturday before Whit Sunday and ending on the Tuesday after; the Long Vacation, commencing on the 1st August and ending on the 11th October; and the Christmas Vacation, commencing on the 24th December and ending on the 6th January (Ord. 63, r. 4). See SITTINGS; TERM.

II. Vacation also signifies, in ecclesiastical law, that a church or benefice is vacant; *e.g.*, on the death or resignation of the incumbent, until his successor is appointed. See PLENARTY; SEQUESTRATION.

Vaccination. This process (which consists in inoculation with the virus of cow-pox as a preventative of small-pox) has been compulsory in England since the enactment of the statute 16 & 17 Vict. c. 100. The enactments now in force are the Vaccination Acts, 1867 to 1907. Under the Vaccination Acts, 1898

and 1907, the person having lawful custody of an infant is not liable to any penalty for failure to have the infant vaccinated if he makes a statutory declaration that he believes vaccination to be prejudicial to the health of the child.

Vadium. A pledge or security: the word is not used in our law.

Vadium mortuum; Vadium vivum. See MORTGAGE.

Vagabonds; Vagrancy. The provisions of the law with respect to vagrancy are directed against (i) "idle and disorderly persons," *e.g.*, persons who refuse to work, unlicensed pedlars, beggars, etc.; (ii) "rogues and vagabonds," *e.g.*, fortune-tellers, persons lodging in deserted buildings or the open air without visible means of subsistance, sellers of obscene prints, etc.; (iii) "incorrigible rogues," *e.g.*, persons twice convicted of being rogues and vagabonds, persons who escape from imprisonment as rogues and vagabonds, etc. These offences are punishable with imprisonment, and (in some cases) with whipping (Vagrancy Act, 1824).

The sellers of obscene prints, etc., amenable under the Act of 1824, are those who trade in a public place; the Vagrancy Act, 1838, put on the same footing those who exposed their wares in shop windows.

The Vagrant Act Amendment Act, 1873, provides that those gaming or betting in a public street shall be deemed rogues and vagabonds. The Vagrancy Act, 1898, contains a similar provision with regard to men or women persistently soliciting in public places for immoral purposes and with regard to men living on the earnings of prostitution. The Criminal Law Amendment Act, 1912, s. 7 (1), extends and amends the provisions of s. 1 (3) of the Act of 1898 as to the state of facts in which a man will be presumed to live upon the earnings of prostitution, unless he satisfies the Court to the contrary effect; and it further provides (s. 7 (4)) that a female who makes money out of the prostitution of another female can be dealt with as a rogue and a vagabond.

Vagabonds, Statute of. The popular title of the statute 1 Edw. 6, c. 3. See BRANDING.

Valor beneficiorum. See TENTHS.

Valor ecclesiasticus. A record of the whole of the property held by the Church in England, made in 1535 by a commission appointed by Henry VIII. pursuant to the statute 26 Hen. 8, c. 3. It has been printed in six folio volumes (1810-1834) as part of the *Record Commission Series*. The *Valor* was prepared for the purpose of enabling the Crown to collect the *annates* effectively (q.v.): and it was also most useful when the property of the monasteries came to be confiscated. The MS. of the *Valor* is defective: for instance, those parts relating to the whole diocese of Ely and to the counties of Berks, Rutland and Northumberland, and to much of the diocese of London, are missing. But along with the *Valor* is preserved another contemporary MS., entitled the *Liber valorum*, which covers the whole of England, though with less full details; and the blanks in the *Valor* have been filled in from the *Liber*, as far as may be.

Valore maritagii, De. See VALUE OF MARRIAGE.

Valuable Consideration. See CONSIDERATION; VALUE.

Valuation. As to valuation for rates and taxes, see ASSESSMENT; RATE.

As to valuation of securities in administrative proceedings, see CREDITOR.

Valuation and Appraisement. An appraiser is any person who values any description of property for, or in expectation of, any hire, gain, fee, or reward (Appraisers' Licences Act, 1806, s. 4). Any person appraising without an annual licence is liable to a penalty of £50 (s. 6) unless he be a licensed auctioneer (s. 7) or a licensed house agent (Revenue (No. 1) Act, 1861, s. 11). A licensed appraiser may act as a house agent (*ib.* s. 13). The appraiser's licence costs £2 (Revenue Act, 1845, s. 1).

Valuation List. This is a list of all the rateable hereditaments in a parish which, in the area outside the Metropolis, is made out each year under the direction of the Assessment Committee (Union Assessment Committee Act, 1862, s. 24). It shows (I.) the rateable value of (1) agricultural land; (2) other land; and (3) other rateable hereditaments (*ib.* ss. 14, 27; Agricultural Rates Act, 1896, s. 5 (*a*)); (II.) the totals of (1) (2) and (3) (Agricultural Rates Act, 1896, s. 5 (*b*); Poor Law Amendment Act, 1868, s. 30); and (III.) the annual value of Crown land on which rates are not paid (Agricultural Rates Order, 1896, art. 16, Sch. W).

As regards the metropolitan area (see ASSESSMENT) a somewhat similar list is made out every five years by the overseers of each parish; this list (known as the quinquennial list) is amended by a supplementary list made out by them each year in order to provide for the alterations taking place during the period of five years, and there are, moreover, pro-

visional lists made from time to time during each year to provide for alterations between one supplementary list and the next. See the Valuation (Metropolis) Act, 1869, and the Valuation (Metropolis) Amendment Act, 1884.

Value is often used as an abbreviation for "valuable consideration," especially in the phrases "purchaser for value," "holder for value," etc. The question whether a person acting in good faith has given value for property is often of importance when the person from whom he acquired it had not a perfect title as against some other person. Thus, if a trustee fraudulently sells the trust property to a "*bona fide* purchaser for value," that is, to a person who had no reason to believe that it was affected with a trust, and gave a fair price for it, the *cestui que trust* has no claim against the purchaser. See BONA FIDES; CONSIDERATION; NEGOTIABLE.

Valued Policy. See POLICY OF ASSURANCE.

Value of Marriage. A writ (anciently known as *Valore maritagii*) which until 1660 lay against one who, holding by knight service and being under age and unmarried, refused a marriage without disparagement offered by his lord. See DISPARAGEMENT; MARRIAGE, VALUE OF.

Compare FORFEITURE OF MARRIAGE.

Value Received. These words are usually inserted in a bill of exchange or promissory note, but they are of no effect. If the bill or note is given for an illegal or an immoral consideration or without consideration, they do not make it any the better; and if it is given for good consideration they are superfluous.

Variance, in procedure, was a discrepancy between a material statement in a pleading and the evidence adduced in support of it at the trial. At common law a variance, whether in a civil or a criminal proceeding, was a fatal defect, incapable of amendment; but this is no longer so. See AMENDMENT.

Vasto, De. A writ which anciently lay against a tenant for life or for years who committed waste.

Vastum. Waste (q.v.). Anciently it meant also common land which was open to the cattle of the commoners.

Vattel. Emerich von Vattel was born at Couret, in Switzerland, in 1714 and died in 1767. He wrote *Droit de Gens* and *Questions de Droit naturel*.

Vavasor. In Norman times this was a feudal tenant ranking next below a baron. They seem to have been vassals of the barons, their title being a corruption of the low Latin *vassi vassorum* (vassals of vassals).

Vavasory. Lands held by a vavasor.

Veal-money. An annual payment formerly made by the tenants of the manor of Bradford in Wiltshire as a commutation for the duty of actually bringing veal to the lord.

Vectigal judiciarium. This anciently meant pecuniary penalties paid to the king and used to defray the expenses of the Courts of Justice.

Vejours. This is a corruption of the word *visores*, that is to say, viewers. It was formerly used as meaning persons sent by the Court to view the corpse of a murdered man or to view a place in dispute in order to inform the Court regarding it.

Venary. In the forest law, beasts of venary meant such as were got by hunting.

Venditioni exponas. When a writ of *fieri facias* has been issued and the sheriff returns that he has taken goods, but that they remain in his hands for want of buyers, a writ of *venditioni exponas* ("that you expose for sale") may be sued out (Ord. 43, r. 2) to compel a sale of the goods for any price they will fetch. See DISTRINGAS.

When a writ of extent in chief or in aid has been returned and no one appears to claim the goods, etc., mentioned in the inquisition, a *venditioni exponas* issues directing the sheriff to sell them.

Venditor regis. (The King's Salesman.) He exposed to sale goods and chattels which had been seized to answer any debt due to the king. The office was abolished in the reign of Edward II.

Vendors and Purchasers. The law relating to vendors and purchasers of real property includes such subjects as the particulars and conditions of sale, the contract of sale, the abstract of title, requisitions, searches, etc., and the preparation and completion of the conveyance. See the various titles, and also COVENANT; SALE; SPECIFIC PERFORMANCE; TITLE; TITLE-DEEDS.

Venereal Diseases. The treatment of these diseases by anyone other than a duly qualified medical practitioner is illegal (Venereal Disease Act, 1917, s. 1). The advertisement of any remedy for any such disease is illegal except in publications circulating amongst medical practitioners and chemists (s. 2). Contravention of any provision of the Act can be punished summarily or on indictment (s. 3). "Venereal Disease" means syphilis, gonorrhea or soft chancre (s. 4). See INDECENT ADVERTISEMENTS.

The imputation of venereal disease is actionable *per se*.

The communication of venereal disease by one spouse to another is cruelty as regards matrimonial law.

Venire, Court of. A civil Court at Kingston-upon-Hull having jurisdiction in all actions to any amount. It is held under the authority of charters granted by Henry VII., Henry VIII. and Charles II.

Venire de novo, in criminal practice, was a writ issued by the King's Bench on a writ of error (q.v.) from a verdict given in an inferior Court, vacating the verdict and directing the sheriff to summon jurors anew, whence the name of the writ. It was in fact a mode of directing a new trial.

Venire facias. An ancient writ in the nature of a summons to appear. It is practically obsolete. Where, however, an indictment has been removed into the King's Bench at the instance of the prosecutor, the writ may be moved for by the prosecutor (Crown Office Rules, r. 83) if the defendant fails to appear; and where application is made to the King's Bench to amend a coroner's inquisition under its common law jurisdiction, the writ is in strictness necessary in order to bring the coroner before the Court.

Anciently there were many forms of the writ. Their purposes were described by the various words following the words *venire facias*.

Venire facias ad respondendum is, or was, a writ to summon a person, against whom an indictment for a misdemeanour has been found, to appear and be arraigned for the offence. It may, in theory, be issued by the King's Bench, by a judge of assize, or a Court of quarter sessions. A warrant is now used instead. See DISTRINGAS; OUTLAWRY; WARRANT.

Venire facias juratores. A writ commanding the sheriff to summon a jury; it was abolished by s. 104 of the Common Law Procedure Act, 1852.

Venire facias tot matronas. A writ which formerly was issued to the sheriff commanding him to summon a jury of matrons to execute the writ *de ventre inspiciendo*. See VENTRE INSPICIENDO, DE.

Venter in the old books is equivalent to mother; as when Littleton speaks of a man having issue two sons "by divers venters," that is, by different wives; or of two brothers "by divers venters," meaning two brothers having different mothers.

Ventre inspiciendo, De. Where the widow of an owner of land is suspected of feigning herself with child in order to produce a supposititious heir to the estate, the heir presumptive may have a writ *de ventre inspiciendo*, to examine whether she be with child or not; and if she be, to keep her under proper restraint until delivered. It is, however, obsolete.

Venue. In criminal procedure, the venue was a note in the margin of an indictment, giving the name of the county or district within which the Court in which the indictment is preferred has jurisdiction. Now there is no such note; but the commencement of the indictment (see the Indictments Act, 1915, Sch. I., r. 2) indicates the place at which the accused it to be tried. The common law rule is that the venue must be laid (that is, the indictment must be preferred in a Court having jurisdiction) in the county where the offence was committed, but in many cases it may by statute be laid in the county in which the offender was apprehended, or in some cases, in any county. If a man is wounded in one county and dies in another, the venue may be laid in either.

In the former common law practice, the venue was that part of the declaration in an action which designated the county in which the action was to be tried. It was inserted in the margin of the declaration thus: "Middlesex to wit." "London to wit," etc. Venue was of two kinds: "transitory" or "local." It was transitory when the cause of action was of a sort which might have happened anywhere, in which case the plaintiff might adopt any county he pleased as a venue. It was local when the cause of action could have happened in one county only, and then the venue must have been laid in that county. Thus if the action were trespass for breaking the plaintiff's close, the venue must have been laid in the county where the close was situated; for such a trespass could have happened nowhere else. If it were trespass for assaulting the plaintiff, the venue was transitory, for such a cause of action might happen anywhere, and so, in general, in all cases of contract. Under the present rules (see Ord. 36, r. 10), venue is expressly abolished, and the place of trial is entirely a matter for the judge (*ib.*), but the plaintiff, if he wish the action tried elsewhere than in Middlesex, must name in his statement of claim a place for its trial, subject to the place being altered by a judge's order.

See ACTIONS.

Verba accipienda sunt secundum subjectum materiem (6 *Rep.* 62). (Words are to be interpreted in accordance with the subject-matter.)

Verba æquivoca ac in dubio sensu posita

intelliguntur digniori et potentiori sensu (6 *Rep.* 20; *Co. Litt.* 73). (Words which are equivocal, and which are used in a doubtful sense, are to be taken in their more weighty and effectual sense.) Thus tenure *in capite* might be either of the king or of a subject; but when it was mentioned without qualification it was held to mean tenure of the king. And where a statute made a penalty recoverable in any Court of record it was held that this meant only one of the four Courts at Westminster although many minor Courts were also Courts of record.

Verba aliquid operari debent (*Bac. Max. Reg.* 3). (Words ought to have some effect.) Compare VERBA CUM, ETC.

Verba chartarum fortius accipiuntur contra proferentem (*Co. Litt.* 36). (The words of deeds are to be interpreted most strongly against him who uses them.) At 6 Ch. D. 280, Jessel, M.R., is reported to have said: "I do not see how, according to the now established rules of construction as settled by the House of Lords in the well-known case of *Grey* v. *Pearson*, followed by *Roddy* v. *Fitzgerald* and *Abbott* v. *Middleton*, the maxim can be considered as having any force at the present day. The rule is to find out the meaning of the instrument according to the ordinary and proper rules of construction. If we can thus find out its meaning, we do not want the maxim. If, on the other hand, we cannot find out its meaning, then the instrument is void for uncertainty, and in that case it may be said that the instrument is construed in favour of the grantor, for the grant is annulled."

Compare CONSTRUCTIO, ETC.

Verba cum effectu accipienda sunt (*Bac. Max. Reg.* 3). (Words are to be interpreted in such a way as to give them some effect.) Compare VERBA ALIQUID, ETC.; VERBA DEBENT, ETC.

Verba debent intelligi ut aliquid operentur (8 *Rep.* 94). (Words ought to be interpreted in such a way as to give them some effect.)

Verba de præsenti; Verba de futuro. A declaration in the presence of witnesses by A and B was known in the ecclesiastical law as a contract of matrimony *per verba de præsenti* when it was to the effect that they were man and wife, and as a contract of matrimony *per verba de futuro* when it was to the effect that they were betrothed, or, in modern parlance, engaged. See BREACH.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ (*Bac. Max. Reg.* 10). (General words are restricted to the nature of the subject-matter or the aptitude of the person.) This is how Willes, J., briefly translates the maxim at 6 C. B. N. S. 320:—"And so if I grant to A on annuity of £10 '*pro concilio impenso et impendendo*' (for past and future advice); this means his advice as to medicine if he be a physician and his advice as to law if he be a lawyer."

Verba illata inesse videntur. (Words referred to are deemed to be incorporated.) This is the abbreviated version of *verba relata*, etc., which Heath, G., uses at 5 *Taunt*, 337.

Verba intentioni, non e contra, debent inservire (8 *Rep.* 94). (Words ought to be made subservient to the intent, and not the other way about.) Compare MENS TESTATORIS, ETC.

Verba ita sunt intelligenda ut res magis valeat quam pereat (*Bac. Max. Reg.* 5). (Words should be read in such a way—if that be possible—as rather to give effect to the deed, etc., in which they are used than to render it nugatory). Compare BENIGNÆ, ETC.

Verba posteriora, propter certitudinem addita, ad priora, quæ certitudine indigent, sunt referenda (*Wing.*). (Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty.) Compare EX ANTECEDENTIBUS, ETC; PARTEM ALIQUAM, ETC.; OPTIMA STATUTI, ETC.

Verba relata hoc maximè operantur per referentiam ut in eis inesse videntur (*Co Litt.* 359). (Words to which reference is made in an instrument have the same operation as if they were inserted in the instrument referring to them.) As Crompton, J. (9 *H. L. Cas.* 99) said, "by referring, in a document signed by the party, to another document, the person so signing in effect signs a document containing the terms of the one referred to. Incorporation by reference has, in fact, the same effect as literal incorporation; and this applies to Acts of Parliament as well as to deeds, contracts and agreements generally."

Verborum obligatio verbis dissolvitur (*D.* 50, 17, 35). (An obligation created by words is dissolved by words; and so a verbal release of a verbal contract is effectual.) Compare EODEM LIGAMINE, ETC.

Verderer. An officer of the forest who was sworn to maintain the assise of the forest. He was chosen by the freeholders of the county

Verdict. A verdict is the opinion of a jury on a question of fact in a civil or criminal proceeding. The verdict of a jury must be unanimous. A general verdict (formerly sometimes called a verdict at large) is where the jury find the point in issue generally, as where in a civil case they find for the plaintiff

or defendant, or where, in a criminal case, they return a verdict of guilty or not guilty. A special verdict is where they find the facts of the case specially, that is, they say that certain facts have been proved, leaving to the Court the application of the law to the facts thus found. The jury is entitled to find a general verdict in any case whether civil or criminal; and in any criminal case they may, if they think fit, find a special verdict. But special verdicts, although they are the rule in civil cases, are very unusual in criminal cases.

When a jury have found a prisoner guilty of one offence and the facts prove another offence, the Court of Criminal Appeal may alter the verdict and sentence for such other offence (Criminal Appeal Act, 1907, s. 5 (2)); and where a prisoner is convicted and sentenced on a special verdict, the Court of Criminal Appeal may, if they decide that the Court below has drawn a wrong conclusion from the verdict, record such conclusion as is warranted by law and pass the appropriate sentence (*ib.* s. 5 (3)).

When a coroner's jury find the death of a person without saying how he came by it, this is called an open verdict. See INQUEST.

In an action in the High Court, when the jury have found their verdict, the judge could formerly direct that judgment should be entered for any party, or adjourn the case for further consideration, or leave any party to move for judgment, but now he must direct judgment to be entered as he thinks right. (See MOTION FOR JUDGMENT.) Any party may also move for a new trial (see TRIAL), or apply to the Court of Appeal to set aside the judgment (see Ord. 58, r. 4).

See CONVICTION; ACQUITTAL; INQUISITION; FINDING.

Veredictum, quasi dictum veritatis, ut judicium quasi juris dictum (*Co. Litt.* 226). (The verdict is, as it were, the *dictum* of truth, as the judgment is the *dictum* of law.) This maxim is quoted in collocation with another which is practically the same as AD QUÆSTIONEM, ETC.

Verge. "At common law," says Mr. Jervis, "the coroner of the county had no jurisdiction within the compass of the King's Court, which bounds the jurisdiction of the Lord High Steward of the Household, and comprehends a circuit of twelve miles round the residence of the Court [wherever held]. This jurisdiction is usually called the verge, within which the Coroner of the King's Household, or, as commonly called, the Coroner of the Verge, had jurisdiction over all matters within the duty of a coroner, exclusive of the coroner of the county. A jurisdiction so exclusive, particularly as the King's Court was moveable, was found to be attended with many inconveniences . . . and therefore it was found expedient to impart, in some cases, to the coroner of the county, a jurisdiction concurrent with that of the Coroner of the Verge." The Lord Steward (q.v.) now exercises a mere domestic jurisdiction over the members of the Royal Household; and the Coroner of the King's Household (see s. 29 of the Coroners Act, 1887) holds inquests only on the bodies of those dying within the limits of any place where the King is residing.

As to the Royal Household, see Pegge, *Curialia*, 1782-91, and his *Collection of Ordinances*, etc., 1790.

A verge of land is the same as a virgate (q.v.).

See TENANTS BY THE VERGE.

Vergers. Formerly there were vergers or porters of the verge, who carried white wands before the judges of the King's Bench and of the Common Pleas. Now the term is confined to the minor official who carries the mace before the dean in a cathedral and before the vice-chancellor in the two ancient English universities.

Verification. Part of the system of pleading used before the enactment of the Common Law Procedure Act, 1852. Any pleading subsequent to the declaration (q.v.) and alleging new matter, concluded with a "verification," consisting of the words: "And this the defendant [or plaintiff] is ready to verify" or (if it was intended that the matter pleaded should be tried otherwise than by a jury) of the words: "And this the defendant [or plaintiff] is ready to verify by the said record *or* to verify when, where and in such manner as the Court shall order, direct or appoint." See GO TO THE COUNTRY.

Veritas, à quocunque dicitur, à Deo est (4 *Inst.* 153). (Truth, by whomsoever pronounced, is from God.) Quoted by Coke when citing the practice of heathens, Saracens and Turks as to the inviolability of the persons of ambassadors and others *ejusdem generis*. It might also be quoted as showing that once the truth of evidence is accepted, the character of the witness who gives it is immaterial; his character is a relevant matter only in so far as it tends to show whether he is or is not telling the truth.

Veritas nihil veretur nisi abscondi (9 *Rep.* 20). (Truth fears nothing but concealment.)

Veritas nominis tollit errorem demonstra-

tionis (*Bac. Max. Reg.* 24). See PRÆSENTIA, ETC.

Vermin. Rabbits are not vermin within the meaning of the Gun Licence Act, 1870, s. 7 (4), which exempts an occupier of land from taking out a gun licence if he uses a gun only for the purpose of "scaring birds or killing vermin" on his land. Squirrels are vermin for the purposes of the Forestry Act, 1919, s. 4, as to which see RABBITS. There is no statutory or other definition of vermin. It would appear to include rats, mice, stoats, weasels, and cats which have gone wild; but it certainly does not include any bird no matter how destructive, for the Gun Licence Act, s. 7 (4), impliedly excludes all birds from the category of vermin.

See RATS AND MICE.

Versificator. The *versificator regis*, or verse-maker to the king, certainly existed as early as the time of Richard I. His *versificator* was Gulielmus Peregrinus, that is to say, Wandering William. One Master Henry was the *versificator* in 1250. By the reign of James I. the *versificator* had been definitely replaced by the poet laureate (q.v.); but the precise period at which the change took place is uncertain.

Vert. In the law of the forest, this meant anything, from a small shrub to a tree, which bore leaves and was in a forest. The trees were known as over-vert and the shrubs as nether-vert.

Vert also meant the right, under a royal grant, of cutting green wood in the forest.

Very Lord and Very Tenant means an immediate lord and tenant, as where A holds land of B without any mesne lord. See LORD.

Vest; Vested. When a person becomes entitled to a right, estate, etc., it is said to vest in him.

An estate or interest may vest in one of two manners, namely, in possession or in interest. An estate is said to be vested in possession when it gives a present right to the immediate possession of property; while an estate which gives a present right to the future possession of property is said to be vested in interest: thus, if land is given to A for life, and after his death to B in fee, then A's estate is vested in possession, while B's estate is vested in interest. If B dies before his estate vests in possession, it passes to his representatives (his heir or devisee). As a general rule, "vested" means "vested in interest," as opposed to "contingent" (q.v.). Thus, remainders are divided into vested and contingent. See REMAINDER.

An estate or interest is said to be "vested subject to being divested" when it is vested, but is defeasible on the happening of a particular event. Thus, where property is given to A, an infant, absolutely, with remainder over to some one else if he dies under twenty-one, he takes a vested interest determinable on his death under age. See CONDITION.

"Vest" is used specially to denote a transfer by or under an Act of Parliament. Thus, by the Bankruptcy Act, 1914, s. 18 (1), as soon as a person is adjudicated bankrupt, his property vests in the trustee for the time being: that is, the property is transferred to the trustee in the same way as if the bankrupt had executed a conveyance of it. A statutory transfer of this kind may be either absolute (as in the above example) or limited: thus, where an Act of Parliament enacts that a street shall vest in an urban sanitary authority, this means that the surface of the land, and so much of the soil as is necessary for its use as a street, shall be transferred to the authority.

Vested is also applied in a semi-popular sense to rights, interests and expectancies with which it is considered the legislature ought not to interfere without giving compensation. Such are the rights of landowners, which are interfered with when an Act of Parliament is passed authorising the compulsory purchase of their land for the purposes of a railway. The Endowed Schools Act, 1869, ss. 18, 39, enumerates various kinds of "vested interests" for which compensation is to be made, such as the interest of a child on the foundation of an endowed school, by which seems to be meant the child's expectation or hope that it will be kept in the school. Such interests are obviously not of a legal nature.

Vesting Order. This is an order of a Court under which property passes as effectually as it would under a conveyance. As is said under TRUSTEE ACTS, such order may be made under the Trustee Act, 1893, and under the Lunacy Act, 1890.

Lands held upon trust for a charity may be transferred by vesting order to the treasurer or the acting trustee thereof (Charitable Trust Act, 1853, ss. 48-50).

When, in an action or suit, a judgment or decree is made directing the sale or conveyance of lands, the Court may, under s. 30 of the Trustee Act, 1893, make vesting orders for carrying the same into effect.

Vestments. It has been decided by the

Judicial Committee of the Privy Council that the effect of the Ornaments Rubric (q.v.), construed along with Advertisements of Queen Elizabeth (q.v.) and the Act of Uniformity, 1662 (13 & 14 Car. 2, c. 4), is to make the use at the Communion Service of the vestments known as the alb, the chasuble and the cope (all of which came into modern use only during the middle of the last century, about the time of what is popularly known as the Ritualistic Movement) illegal, except in cathedral and collegiate churches. They are, however, extensively used elsewhere.

Vestry. A vestry, properly speaking, is the assembly of the whole of a parish, met together in some convenient place, for the despatch of the affairs and business of the parish, the repair of the church, etc.: and this meeting being formerly commonly held in the vestry adjoining to or belonging to the church, it thence takes the name of vestry, as the place itself does, from the priest's vestments, which are usually deposited and kept there. Meetings in the vestry room of a church may be forbidden by the Poor Law Commissioners (now the Ministry of Health) under s. 1 of the Vestries Act, 1830, where the population of the parish exceeds 2,000 persons.

In ordinary cases, the vestry consists of all persons, whether resident or non-resident and whether members of the Church of England or dissenters, who are rated for the relief of the poor in the parish, but in some parishes there exists a custom by which a certain number of persons (in many cases self-elected) manage the concerns of the parish in lieu of the whole body of parishioners: these are called select vestries. Under the adoptive Vestries Act, 1831, every parish could establish a select vestry (known as a "statutory select vestry"), and the statutory select vestry supersedes the vestry proper in every parish where it is established: but that Act was repealed as regards metropolitan parishes by the Metropolis Management Act, 1855, s. 1, although it is still in force elsewhere.

Down to 1894 the vestry transacted in all rural parishes the business which was transferred to the parish councils by the Local Government Act, 1894; the vestries of the metropolitan area were superseded for non-ecclesiastical purposes in 1899 by the borough councils established by the London Government Act, 1899; but in urban parishes the vestry still exercises such non-ecclesiastical functions as appertained to it before 1894 (unless such functions have been transferred to the urban or other authority) and exercises in fact an authority in secular matters corresponding to that of the parish council in rural parishes.

Vesture. If a man, being seised in fee of land, grants the vesture of the land to another man in fee, the land itself will not pass to the grantee, but only a particular right in the land; "for," says Coke, "thereby he shall not have the houses, timber-trees, mines, and other reall things parcell of the inheritance, but he shall have the vesture of the land (that is), the corne, grass, underwood, swepage and the like, and he shall have an action of trespasse *quare clausum fregit*" (*Co. Litt.* 4B), for any infringement of his right.

"A man" (see *Co. Litt.* 122A), "may prescribe or alledge a custome to have and enjoy *solam vesturam terræ* from such a day till such a day, and hereby the owner of the soyle shall be excluded to pasture or feed there"; and it seems that a person may also prescribe for a sole vesture, excluding the owner from year's end to year's end. A right of *prima vestura* gives the right of mowing the first crop (*Palm*, 174).

The right of vesture seems to be an incorporeal hereditament.

Vetera statuta. The ANTIQUA STATUTA (q.v.).

Veterinary Surgeons. A veterinary surgeon is one skilled in the medical and surgical treatment of horses, cattle, sheep, dogs and other domesticated animals. Down to 1881 any person could practise, and describe himself, as a veterinary surgeon. There had, indeed, been founded in 1791 an association which in the year 1845 was incorporated by royal charter as the Royal College of Veterinary Surgeons; and it received supplemental royal charters in 1876 and 1879; but it had no control over the profession until the enactment of the Veterinary Surgeons Act, 1881. That Act provided that (s. 17 (2)) no person could recover for veterinary services unless he was on the register (see ss. 2, 3) of veterinary surgeons or had held before August 27, 1881, the certificate of the Highland and Agricultural Society of Scotland; that (s. 16) any person falsely pretending to be a fellow or member of the college should be liable to a fine of not more than £20; and (s. 17 (1)) that anyone holding himself out as a veterinary surgeon should be liable to a like penalty unless he was on the register or held the Scotch certificate. The Act of 1881 (s. 6) gave the college power to remove from the register persons convicted of serious offences or guilty of conduct professionally disgraceful.

The Veterinary Surgeons Amendment Act, 1900, empowered the college, in appropriate cases, to put holders of the Scotch certificate in the same position as persons who had been on the register but who had been removed from it; and the Veterinary Surgeons Act (1881) Amendment Act, 1920, gave the college like powers with regard to "existing practitioners," that is to say, persons (see s. 15 of the Act of 1881) who for five years before 27 August, 1881, had been practising as veterinary surgeons without being registered as such by the college before that date but who subsequently were registered separately as existing practitioners.

Except as regards "existing practitioners" and holders of the Scotch certificate (both of whom are now very few) the effect of s. 4 of the Act of 1881 is that since 27 August, 1881, no person can become a veterinary surgeon unless he has passed professional examinations corresponding to those which a medical practitioner has to pass.

The Act of 1920, s. 4, makes companies registered under the Companies Acts and societies registered under the Industrial and Provident Societies Acts, liable to penalties for offences against the Act of 1881 in like manner as are individuals.

Vetitum namium. See NAM.

Veto. In constitutional law this has come to be popularly applied to the rejection of a Bill by the House of Lords, or to the withholding of the Royal Assent. (See ACT OF PARLIAMENT.) This use of the word is, however, quite modern and is unknown to our law.

Vexatious. A proceeding is said to be vexatious when the party bringing it is not acting *bona fide*, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result. Such a proceeding is often described as "frivolous and vexatious," and the Court may stay it on that ground, both under its inherent jurisdiction and under Ord. 25, r. 4. (See ABUSE OF PROCESS.)

At common law any member of the public could send up to a grand jury a bill (known as a voluntary bill) for any crime. This right has been much restricted by the Vexatious Indictments Act, 1859, which provides that no bill shall be presented to or found by a grand jury (unless the person presenting it is a prosecutor who has been bound over to prosecute, or unless the accused has been committed for trial) except by leave of the High Court or of the Law Officers of the Crown in the case of offences specified in the Act. To these offences a large number of other offences have been added by subsequent Acts: see *Archbold* (25th ed.), p. 68. As to notice of intention to present a "voluntary bill," see the Assizes and Quarter Sessions Act, 1908, s. 1 (5).

— **Via trita est tutissima** (10 *Rep.* 142). (The much used road is the safest.) Tindal, C.J., uses an alternative form when he says, in reply to an application to alter the settled practice of the Common Pleas (*B. N. C.* 45), "Getting rid of a judgment of the Court is so solemn a thing that I think you should pursue the usual course. *Via trita via tuta.*"

Compare CURSUS, ETC.; OMNIS INNOVATIO, ETC.; NOVITAS NON TAM, ETC.

Vicar. In the original sense of the word, a vicar is an incumbent appointed to an appropriated church. A vicar is therefore, in effect, a perpetual curate with a standing salary. (See APPROPRIATION; IMPROPRIATION; RECTOR; CURATE; TITHES.) Every incumbent of a parish church, not being a rector, who is authorised to solemnise marriage, baptisms, etc., and to take for his sole benefit the fees payable thereon, is a vicar for the purpose of style and designation, but not for any other purpose, and his benefice is a vicarage for the same purpose (Incumbents Act, 1868).

Vicar-General. This was formerly an ecclesiastical officer appointed by a bishop to act by his authority and under his direction in matters purely spiritual, as visitation, correction of manners, etc., "with," as Gibson, writing in 1713, says at p. xxii. of the *Introduction* to his *Codex*, "a general inspection of men and things, in order to the preserving of discipline and good government in the church." But the vicar-general of this type —who was a survival from the Pre-Reformation period—is obsolete. The modern vicar-general is a purely ministerial or judicial officer, not necessarily in Holy Orders, who, except in the Province and Diocese of Canterbury, holds also the office of official principal or of chancellor, and is designated as chancellor or official principal. The vicar-general of the Archbishop of Canterbury is known as vicar-general: he grants special marriage licences for all England, and he has an office for that purpose in London, at 3, Creed Lane, Ludgate Hill. See CHANCELLOR; OFFICIAL PRINCIPAL.

Vicarial Tithes. See TITHES.

Vicario deliberando occasione cujusdam recognitionis capto, etc. A writ which an-

ciently lay for a spiritual person imprisoned upon forfeiture of a recognisance.

Vicarius non habet vicarium (*Branch, Max.* 5th ed., 380). (A delegate has no delegate.) See DELEGATUS NON, ETC.

Vicars Choral. Those minor dignitaries of the choir of a cathedral or collegiate church who act as assistants to the canons. They are appointed by the chapter or the dean of their respective churches (Ecclesiastical Commissioners Act, 1840, ss. 44, 45).

Vice-Admiral. See ADMIRAL.

Vice-Admiralty Courts are, or rather were, Courts having admiralty jurisdiction in British possessions overseas. From the early part of the seventeenth century they were gradually established as various possessions fell into our hands. They acted under commissions from the Crown authorising governors of colonies to exercise such powers as in England appertained to the Lord High Admiral. Subsequently they were regulated by various statutes, the last of which was the Vice-Admiralty Courts Act, 1863. The Colonial Courts of Admiralty Act, 1890, provided (s. 2) for the establishment of Colonial Courts of Admiralty with (s. 6) a right of appeal to the King in Council in all British possessions (other than the Channel Islands—see s. 11 (1)—to which (s. 16) it was applied by order of the King in Council. On such application the local Vice-Admiralty Court was abolished (s. 17) and the Act of 1863 was repealed as regards the particular possession in question. The Act of 1890 has now been applied to all the great self-governing dominions. The Sovereign has power (s. 11 (2)) to declare that the Act of 1890 shall apply either not at all or only to a limited extent to possessions which are not self-governing.

Vice-Chamberlain. The deputy of the Lord Chamberlain. (See CHAMBERLAIN, LORD.) He goes in and out with the Ministry of the day and is usually a member of the House of Commons.

Vice-Chancellor. The first Vice-Chancellor (styled Vice-Chancellor of England) was appointed in 1813 to relieve the Lord Chancellor of some of his duties as a judge of first instance of the Court of Chancery; in 1841, two more Vice-Chancellors were appointed, partly to take over the equity business of the Court of Exchequer, but the number of three was not made permanent until 1852. So far back as the reign of Henry II. there had been deputies who kept the Great Seal during the absence of the Chancellor and were known as Vice-Chancellors; but they were not Vice-Chancellors in the modern sense.

The Vice-Chancellor and the Master of the Rolls (q.v.) were the judges of first instance of the Court of Chancery, and on the formation of the Supreme Court of Judicature they were transferred to the Chancery Division of the High Court of Justice by the Judicature Act, 1873, ss. 5, 31 (1). The judges appointed as successors to the Vice-Chancellors do not bear that title, but are called justices of the High Court (*ib.* s. 5).

One of the Vice-Chancellors (usually the senior Vice-Chancellor) constituted a Court of Appeal in equity business from the County Courts and the Chancery Court of Lancaster. All appeals from inferior Courts are now heard by Divisional Courts of Appeal of the High Court (Judicature Act, 1873, s. 45).

There is also a Vice-Chancellor of the Duchy of Lancaster (see CHANCELLOR), and at each of the two ancient universities there is a Vice-Chancellor as deputy for the Chancellor. See UNIVERSITY COURTS.

Vice-comes. The ancient Latin equivalent for sheriff. The word is literally the equivalent of viscount, but the sheriff was the *vice-comes* for hundreds of years before viscounts (q.v.) were first created.

Vice-dominus. The same as vice-comes (q.v.) *Vice-dominus episcopi* anciently meant a vicar-general (q.v.).

Vicinage. See COMMON.

Vicis et venellis mundandis. A writ which anciently lay to the mayor and bailiffs of a town to compel them to cleanse the streets and lanes thereof.

Vicontiel; Vicountiel. Appertaining to the sheriff or *vice-comes*. Vicontiel writs were such as were triable in the old county court of the sheriff. Vicontiel rents were those which the sheriffs collected and accounted for to the Crown; the Fines Act, 1833, s. 12, made them part of the revenue of the Crown and collectable by the Commissioners of Woods and Forests.

Victoria and Albert, Order of. Founded in 1862 for ladies, who bear the appendix V. A. No members have been appointed recently. It is of course quite distinct from the Victoria Cross.

Victor Townley Act. The popular title of the statute 27 & 28 Vict. c. 29. It was passed in order to amend the statute 3 & 4 Vict. c. 54, under which a murderer named Victor George Townley, who had been duly convicted, was reprieved upon the ground of alleged

insanity, although it was generally believed that he was in fact perfectly sane.

Victualler. This, or the term "licensed victualler," is commonly used as meaning a publican. Anciently the word had a wider meaning: thus the statute 22 Hen. 8, c. 13, makes it include "bere bruers and bakers."

Victualling House. There is no statutory definition of this term. It appears to mean a house at which food for consumption on the premises, but not lodging, is supplied to the public generally. The term applies to such places as the old-fashioned "eating-house" and the modern "tea-shop," as well as to restaurants, etc., but it is not commonly used. A public-house at which luncheons, etc., are supplied is also a victualling-house; but a hotel is not.

Videlicet. (Namely; that is to say.) Under the ancient system, when a pleader did not wish to be put upon strict proof of an averment as to time he introduced it with a *videlicet*—"*videlicet* on the first day of December, etc.," or as the case might be. This was called "laying the time under a *videlicet*."

Vidimus. The same as *inspeximus* (q.v.).

Vi et armis. "With force and arms." See TRESPASS.

View. When an action or other proceeding concerns an immoveable thing, such as land or houses, it is frequently desirable to have it seen and examined by the judge, jury, referee, etc., before the trial. A judge may view any such property under Ord. 50, r. 4, and a referee, either with or without his assessors, can also view under Ord. 36, r. 48. An order that a jury shall view may be made under Ord. 50, r. 5. In the County Court, the judge may view, or order that a jury shall view, under Ord. 22, r. 17, of the County Court Rules.

In any criminal case the judge may order that the jury or some of them (called "viewers") may view a place in question (Juries Act, 1825, s. 23). See SHOWERS.

The old writ of view, which had formerly to be issued as a preliminary to any place being viewed by a jury in a civil action, was abolished by the Common Law Procedure Act, 1852, s. 114, which provided that all things which used to be done upon the writ could be done upon a rule or order to view.

View and Delivery. When a right of common is exercisable, not over the whole waste, but only in convenient places indicated from time to time by the lord of the manor or his bailiff, it is said to be exercisable after "view and delivery." See COMMON; ASSIGNMENT OF WASTE; STINT.

View of Frankpledge. See FRANKPLEDGE.

Vigilantibus, non dormientibus, jura subveniunt (2 *Inst.* 690; *Wing.* 692). (The laws give help to those who are watchful and not to those who go to sleep.) This is quoted by Coke (at 4 *Rep.* 10) in connection with conduct described as *crassa et supina negligentia*, which, as he says, the statute under consideration never intended to relieve. But this maxim does not apply to the Crown. As is said at 347 *Hob*: "It is no reason that the negligence of his officers . . . should defeat the King. *Vigilantibus*, etc., is a rule for the subject. But *nullum tempus*, etc., is the King's plea."

Compare CAVEAT EMPTOR. See also ACQUIESCENCE; LIMITATION; PRESCRIPTION.

Viis et modis. In the Ecclesiastical Courts, service of a decree or citation *viis et modis*, that is, by all "ways and means" likely to affect the party with knowledge of its contents, is equivalent to substituted service in the temporal Courts, and is opposed to personal service. See SERVICE.

Vi laicâ removendâ De. ("For the removal of lay force")—is an obsolete writ, which seems to have been applicable where an incumbent was hindered or disturbed in his possession of the benefice.

Vill is in law the same thing as "town" in the technical sense of that word. (See TOWN.) A "vill" seems originally to have been used in the same sense as the Latin *villa*, and to have signified a mere collection of houses in the country, such as buildings on a farm or a manor (*villa ruralis*), in opposition to a walled town (*villa muralis*), namely a city or borough. (See VILLEIN.) "Villa ruralis" appears to be the same thing as an "upland town." (See TOWN.) The word "vill" is not used now except in dealing with the records of manors and with copyhold customs. The parish, in the civil sense, has superseded the vill.

Village Green. See RECREATION GROUNDS.

Villainous Judgment. A sentence anciently passed in, for instance, cases of conspiracy. It made the offender unworthy of credit; it debarred him from access to the king's Courts, that is to say it made him *legem liberam amittere;* and it involved the forfeiture of his lands and goods as well as imprisonment. The *Termes de la Ley* (1641) describes it, without saying whether it was then in use. Blackstone (1759) says that in his time it was

obsolete, "it not having been pronounced for some ages."

Villein. Formerly there existed a class of persons in a position which, as Blackstone says, was "superior to downright slavery, but inferior to every other condition." They belonged principally to lords of manors, and were either *villeins regardant*, that is, annexed to the manor or land, or else they were *in gross*, or at large, that is, annexed to the person of the lord; thus, where a lord granted a villein regardant by deed to another person, he became a villein in gross. Villeins could not leave their lord without his permission, nor acquire any property; but they could sue anyone except their lord, and were protected against atrocious injuries by him.

Villeinage has never been formally abolished, but it had become rare in Edward the Sixth's reign, and it disappeared altogether under the Stuarts.

See VILLENAGE; NEIFE; MANUMISSION; COPYHOLD; MARKET; CONFESSION; PRESCRIPTION; SERVICE; TENURE.

The word is derived from the Norman-French *vileyn*, which itself came from the low Latin *villanus*, that is to say one appertaining to a *villa*, or farm.

Villein Socage. See SOCAGE.

Villein Tenure. See TENURE; SERVICE.

Villenage signified I. the status of a villein (q.v.), and II. an obsolete tenure, which existed where land was held of a lord of a manor by a villein, or by a free person by villein or base service. It has gradually become either extinct or converted into copyhold tenure. There was also a kind of tenure in villenage known as privileged villenage or villein-socage, which existed in certain lands of the Crown. The tenants of these lands could not be removed from their lands so long as they did their services, which differed from ordinary villein services in being certain. This kind of tenure gradually became converted into tenure in ancient demesne (q.v.). See COPYHOLD.

Vinculo matrimonii, De. See DIVORCE.

Vinter. This (see 24 *L. T.* 312) means one who sells wine for consumption whether on or off the premises.

Vintners Company. One of the City Companies. Freemen of the company are, under an ancient custom, entitled to sell foreign wines without licence anywhere in England. This privilege has been recognised by several statutes, commencing with the Excise Licence Act, 1825, s. 30, and ending with the Licensing (Consolidation) Act, 1910, s. 111 (2) (c); but the last-mentioned enactment declares that privilege does not extend to freemen by redemption. See COMPANIES, CITY.

Violenta præsumptio is maniefestmes plena probatio (*Co. Litt.* 6). (Violent presumption is often proof.) Compare PRÆSUMPTIO VIOLENTA, ETC.

Viperina est expositio quæ corrodit viscera textus (11 *Rep.* 34). (An interpretation which eats out the bowels of the text is like a snake.) Coke uses this maxim in a judgment reported at 2 *Bulst.* 179. MALEDICTA, ETC., is another version.

Vir et uxor censentur in lege una persona (*Jenk. Cent.* 27). (Husband and wife are considered one person in law.) This can scarcely be regarded as generally true nowadays. See OMNIA QUÆ SUNT, ETC.; UXOR NON, ETC.; MARRIED WOMEN'S PROPERTY). But the common law liability of a husband for torts committed by his wife during coverture still remains

Virga; Virge. See VERGE.

Virgate. A yardland (q.v.).

Virginia Company. See COMPANIES, CHARTERED.

Viridario eligendo, De. A writ which anciently lay to the sheriff commanding him to hold an election of a verderer (q.v.).

Viscount. This is the fourth in rank of the peers; he ranks above a baron and below an earl. The title dates from 1440, when Henry VI. conferred a viscounty on John, Baron Beaumont.

The sons and daughters of a viscount are all known simply as "The Honourable," and this is the case even when the viscount holds a barony. See PEERAGE

Visible Means. In the County Courts Act, 1919 (substituted for s. 66 of the County Courts Act, 1888), this is to be taken as meaning means apparent to or capable of being ascertained by the plaintiff.

Visit and Search. See SEARCH.

Visitation; Visitor. Ecclesiastical and eleemosynary corporations are visitable, or subject to visitation, that is, the law has appointed proper persons (called visitors) to visit, inquire into and correct all irregularities that arise in them. With regard to ecclesiastical corporations, the Crown is the visitor of the archbishops, the archbishops of the bishops within their diocese, and the bishops are the visitors of all subordinate corporations, sole and aggregate. Hence, when an archbishop or bishop makes a circuit through his district to inquire into matters of Church discipline, this is called a visitation. As regards

lay eleemosynary corporations, and other charities, the visitor is the founder, and his heirs, or a person appointed by him, or, in default of all of them, the Crown. The visitors of a charity superintend its internal management, but not (as a rule) the management of its estates and revenue.

The Lunacy Regulation Act, 1853, s. 16, established three "chancery visitors," one of them being a medical man and the other two being barristers. The Lunacy Act, 1890, s. 163, replaces that section and continues the chancery visitors. They visit and report as to both lunatics so found (*ib.*) and those not so found, in respect of whom proceedings in lunacy (q.v.) have been taken (Rules in Lunacy, 1893, r. 5), and, by order of the judge in Lunacy, persons alleged to be lunatics (Lunacy Act, 1890, s. 184). Together with the masters in lunacy (q.v.) they form a board (s. 167).

As to visiting justices, see PRISONS.

Visitation Books. These are records, made under royal authority by the Heralds College between 1528 and 1686, of the pedigrees and arms of peers, baronets and gentry. They would appear, at least as regards pedigrees, to be evidence of the fact that such and such statements were made to the heralds; but they scarcely appear to be evidence of the truth of those statements.

Visitor of Manners. Another name for the Regarder (q.v.).

Vis major is such a force as it is practically impossible to resist, *e.g.*, a storm, earthquake, the acts of a large body of men, etc. The doctrine of *vis major* is, that a person is not liable for damage which he has been instrumental in producing, if it was directly caused by *vis major*. "*Vis major*" includes many things described as "the act of God" (q.v.), the latter term being perhaps more used in the law of contracts.

Visne was an old name for a jury, because formerly the jurors were taken *de vicineto*, that is, out of the neighbourhood where the matters in question had taken place.

Visus franciplegii. (The View of Frankpledge.) An enactment printed under these titles in the *Statutes of the Realm* (Vol. 1, p. 246), *s.v. Statutes of Uncertain Date*, and printed in the *Statutes at Large* as 17 Edw. 2, st. 2.

Vitium clerici nocere non debet (*Jenk. Cent.* 23). (An error of a clerk ought not to hurt.) This maxim, which is quoted only in connection with a clerical error by a clerk of the Court in entering a judgment, is not generally true. If I devise Blackacre to John Smith, then John Smith will take even though it be clearly proved under my own hand, but *dehors* the will, that I had intended the devise to be to James Smith: but as to inaccuracies which are of no substance, see FALSA, ETC. See AMBIGUITY.

Viva voce. See EXAMINATION; EVIDENCE.

Vivary, says Coke, "signifieth fish-ponds or waters wherein fish are kept or nourished. If a man buy divers fishes, as carps, breames, tenches, etc., and put them in his pond, and dyeth [intestate], in this case the heire shall have them, and not the executors, but they shall goe with the inheritance, because they were at libertie, and could not be gotten without industrie, as by nets, and other engines. Otherwise it is, if they were in a trunke or the like"; for in that case they go as personalty. A man has a qualified property in fish confined in a small pond, tank, or stew, so that they can be caught at pleasure, and they may therefore be the subject of larceny. "Vivary" seems to mean a place of this kind. See ANIMALS FERÆ NATURÆ; FISHERY.

Vivisection. The Cruelty to Animals Act, 1876, provides that (s. 1) it shall be an offence to perform any painful experiment on any animal except subject to the restrictions imposed by the Act, or (s. 6) to exhibit to the general public or to advertise any such experiment; that (s. 3) such experiment can be performed only by a person holding a licence from the Secretary of State, only for various specified purposes and under conditions as to anæsthetics insuring a minimum of pain; that (s. 7) such experiments must be made only in registered places; and that (s. 5) experiments on dogs, cats, horses, asses or mules shall be specially restricted. There are also various ancillary provisions. See URARI.

Vix ulla lex fieri potest quæ omnibus commoda sit, sed si majori parti prospiciat utilis est (*Plow.* 369). (Scarcely any law can be made which is applicable to all things; but it is useful if it regard the greater part.) Compare AD EA, ETC.

Void.—I. In the proper sense of the word, an agreement or other act is said to be void when it has no legal effect, or not the legal effect which it was intended to produce. Thus, an agreement which is void on account of its being made for an immoral consideration cannot be enforced. (See UNLAWFUL.) But an instrument which is void may subject the parties to penal consequences. Thus, an agreement amounting to a conspiracy would

be admissible as evidence in criminal proceedings.

An act may be void either *ab initio* or *ex postfacto*. Thus, if a contract is made without the true consent of the parties, or for an immoral consideration, or in fraud of third persons, or by an infant (unless for necessaries), it is void *ab initio*. No person's rights can be affected by it, whether he be a party or a stranger. In the case of a contract which is void for illegality, immorality, or on a similar ground, if money has been paid as the consideration of its performance, the party who has paid it may repudiate the contract and recover it back at any time before performance. But when an unlawful contract has been executed, money paid either in consideration or performance of the contract cannot be recovered back, for IN PARI DELICTO MELIOR EST CONDITIO POSSIDENTIS (q.v.).

If a contract or deed is properly entered into, and is afterwards altered in a material point by the fraud or laches of either party, it becomes void *ex postfacto* as against him, so that he cannot enforce or take abvantage of it. Another example of a transaction becoming void *ex postfacto* occurs in the case of a transaction which was originally voidable, and has been avoided by the election of the party or otherwise. See AVOID; VOIDABLE.

A peculiar kind of void transaction is one the validity of which one of the parties is, as against the other, estopped from denying. Thus, if A by fraud induces B to sign a contract for the sale of land while he thinks he is signing one for the purchase of goods, the contract is void as against B, but he can nevertheless enforce it against A, because A is estopped from setting up his own fraud as a defence. Such a contract is said to be void as against third persons, and voidable as between the parties. See ESTOPPEL; MISTAKE; VOIDABLE.

II. "Void" is frequently used in the sense of "void *ab initio*," as opposed to "voidable" (q.v.).

Voidable. An agreement or other act is said to be voidable when either of the parties is entitled to rescind it, while until that happens it has the legal effect which it was intended to have. (See RESCIND; AVOID.) It can, however, be disputed only by certain persons and under certain conditions, and the right of rescission may be abandoned by the party entitled to exercise it. (See ADOPT; RATIFICATION.) If third persons acquire rights under a voidable contract or other transaction without notice and for value, they cannot afterwards be put in a worse position by its being set aside. Herein a voidable contract differs from a void contract, the nullity of which one of the parties is estopped from asserting (see VOID), for in the latter case no third person can acquire rights under the contract unless the party against whom it is void elects to affirm it.

The principal examples of voidable transactions occur in the case of fraud (q.v.), collateral mistakes (see MISTAKE), and lunacy (see LUNATIC). As to the contracts of infants, see INFANT.

Void and of None Effect. The same as void (q.v.).

Voire dire (Vrai dire; Veritatem dicere). This is a sort of preliminary examination of a witness by the judge, in which he is required to "speak the truth" with respect to the questions put to him; if his incompetency appears from this examination or from extrinsic evidence, *e.g.*, on the ground that he is not of sound mind, he is rejected. The term applies also in the criminal law to sworn statements made to a judge (after a prisoner has been convicted or has pleaded guilty) as to character or previous convictions.

Volenti non fit injuria (*Wing. Max.* 482). – (That to which a man consents cannot be considered an injury.) This maxim is illustrated by the rule that no man can maintain an action of tort in respect of any act to the doing whereof he has consented. And so where a man connived at or condoned the adultery of his wife, the old action of *crim. con* did not lie; and in a like case now a husband cannot obtain a divorce. But there can be no consent to a battery, and therefore a prize fight is always illegal. See WORKMEN'S COMPENSATION.

Volumus. (We will.) A clause commencing with this word was formerly used in the writ of protection and was called the *volumus* See the statute 13 Rich. 2, c. 16, and PROTECTION.

Voluntary. A conveyance, settlement, gift or similar transaction is said to be voluntary when there is no valuable consideration for it See CONSIDERATION.

As a general rule a voluntary gift, conveyance or other executed transaction is valid as between the parties, and so is a voluntary contract, if under seal (see CONSIDERATION CONTRACT); but this rule is subject to exceptions, principally in favour of the creditors of the person bound by the transaction. Thus, in the administration of the estate of a deceased person, his voluntary bonds and

covenants are postponed to his other debts and obligations. (See ASSETS.) The Court will not enforce specific performance of a voluntary covenant. As to the avoiding of voluntary conveyances and settlements, see SETTLEMENT; FRAUDULENT CONVEYANCE.

Property passing under a voluntary settlement is liable to estate duty, if the settlement be for public or charitable purposes, unless the settlor lives for twelve months after the execution of the settlement (Finance (1909-10) Act, 1910, s. 59 (1)), and is also so liable, if the settlement be for any other purpose, unless, in the case of a settlor dying after 29th April, 1909, the settlor has lived for three years after the execution of the settlement (*ib.*). Other dispositions of property, not being for valuable consideration, are subject to the like liability. See ESTATE DUTY.

In equity it is a rule that in every case where one person obtains, by voluntary donation (gift, settlement, contract, etc.), a large pecuniary benefit from another, he is bound to show that the donor understood what he was doing, and that, if he cannot, the donation may be set aside at the instance of the donor or his representatives. (See RESCISSION.) It is also a rule of equity that although no consideration is required for the validity of a complete declaration of trust, or a complete transfer of any legal or equitable interest in property, yet an incomplete voluntary gift creates no right which can be enforced. Thus, where a person possessed of a leasehold house and stock in trade purported to make a voluntary gift in favour of his grandson E by indorsing and signing the following memorandum on the lease, "This deed and all thereto belonging I give to E from this time forth, with all the stock in trade"; and by delivering the lease to E's mother on his behalf; it was held that there was no valid declaration of trust in favour of E (*L. R.* 18 *Eq.* 11). See OATHS; WASTE; WINDING-UP.

Voluntary Contributor. Defined in the National Insurance Act, 1911, s. 1 (1) (3), as amended by the National Insurance Act, 1913, s. 4, and the National Health Insurance Act, 1918, ss. 7 (1), 18 (2).

Voluntary School. The popular description of a public elementary school other than a provided (q.v.). school.

Voluntas donatoris in charta doni sui manifeste expressa observetur (*Co. Litt.* 21). (The will of the donor, clearly expressed in his deed of gift, is to be observed.)

Voluntas facit quod in testamento scriptum valeat (*D.* 30, 1, 12). (The intention [of the testator] is what gives effect to a will.) As to when the intention can be proved by evidence extrinsic to the will, see AMBIGUITY. Compare MENS TESTATORIS, ETC, but see VITIUM CLERICI, ETC.

Voluntas in delictis non exitus spectatur (3 *Inst.* 57.) (In crimes, the intention, and not the result, is looked to.) This maxim is of limited application. Unsuccessful attempts to commit crime are generally punished less severely than successful attempts (see AFFECTUS, ETC.); and there may be an offence even without criminal intent (see ACTUS NON, ETC.); but where A, intending to murder B, kills C by mistake, then A is guilty of murder (*ib.*) and compassing the death of the King is treason the moment it is evidenced by an overt act.

Voluntas reputabatur pro facto (3 *Inst.* 69). (The will is to be taken for the deed); but not always. See VOLUNTAS IN, ETC.

Voluntas testatoris est ambulatoria usque ad extremum vitæ exitum (4 *Rep.* 61). (The will of a testator is ambulatory [that is to say, it may be altered] down to the very end of his life.) But there are occasional exceptions to this rule: see AMBULATORIA, ETC. Compare OMNE TESTAMENTUM, ETC.

Voluntas testatoris habuit interpretationem latam et benignam (*Jenk. Cent.* 260). (The intention of a testator has [always] had a broad and benignant interpretation.) Compare IN TESTAMENTIS, ETC.; TESTAMENTA LATISSIMAM, ETC.; IN CONTRACTIBUS, ETC.

Volunteer is used in law in two senses. A person who gives his services without any express or implied promise of remuneration in return is called a volunteer, and is entitled to no remuneration for his services, nor to any compensation for injuries sustained by him in performing what he has undertaken. But a person who, though he is not obliged to do an act, yet has an interest in doing it, is not necessarily a volunteer. Thus, where the owner of goods assisted the servants of a railway company with the assent of the company in delivering them, and was injured by the servants' negligence, it was held that he was entitled to damages.

In the law of settlements and wills, a volunteer is a person who is merely an object of bounty, as opposed to a person who takes an interest for valuable consideration. Thus, an ordinary devisee or legatee is a volunteer; and if an appointment be made under a general power without consideration the appointee is a volunteer. So, in the case of a voluntary settlement or conveyance, the person on whom

the voluntary settlement is made is called a volunteer. See VOLUNTARY.

Volunteers. All military service in this country is voluntary: the Militia (q.v.) ballot was not used after 1815, and compulsory military service was, in modern times, known only in connection with the war of 1914-18. The members of such supplementary forces as have from time to time been voluntarily raised for military purposes at times of emergency were known as volunteers. More than 400,000 volunteers were enrolled during the Napoleonic wars under various Acts of George III. In 1859 fears of a French invasion led to the formation of many volunteer units; and their position was regularised by the Volunteer Act, 1863, and the later Acts extending and amending it. They (with insignificant exceptions such as the volunteer corps at Oxford, Cambridge and Eton) were in 1908 all transferred to the Territorial Force (q.v.) by Orders in Council made pursuant to the Territorial and Reserve Forces Act, 1907.

Vouch; Voucher. To vouch is to call upon, rely on, or quote as an authority. Thus, in the old writers, to vouch a case or report is to quote it as an authority.

Hence, a "voucher" is a document which evidences a transaction, especially a receipt for the payment of money. In the practice of the Chancery Division, when an account is being taken in chambers, the accounting party has to produce vouchers for all payments of £2 or over claimed to have been made by him; smaller payments may be proved by the oath of the accounting party. This is called "vouching the account." Under Ord. 33, r. 3, the Court or a judge may give special directions as to vouching, etc., and under Ord. 33, r. 4*a*, it may be ordered that vouching, except in the case of contested items, be done in the office of the solicitor for the accounting party.

In the old law of real property, voucher (or "voucher to warranty") was where a person who was being sued for the recovery of land held by him called into Court the person who had warranted the land to him, and required him either to defend the title against the demandant or to yield him land of equal value; the person thus called into Court was called the vouchee. Double voucher was where the vouchee vouched the person who had warranted the land to him; and so with treble voucher, etc. A foreign voucher was where the vouchee was a foreigner, that is, a person out of the jurisdiction of the Court in which the action was brought. In the fictitious proceedings called common recoveries, the vouchee (or ultimate vouchee if there were more than one) was usually the crier of the Court, who was hence called the common vouchee. (See RECOVERY; PRÆCIPE.) Real actions were abolished by the Real Property Limitation Act, 1833, s. 36, and the proceeding by voucher no longer exists. See WARRANTY; WARRANTIA CHARTÆ.

W

Wafer Seal. See GREAT SEAL; PRIVY SEAL.

Waftors. Edward IV. appointed certain officials styled waftors, *custodes*, and *conductores* to guard English fishing vessels off the east coast. To "waft" meant to convoy or safeguard a vessel on her voyage.

Wage. This was the same as gage. To wage one's law meant to proceed to compurgation (q.v.). It also meant to plead. See NON-SUMMONS.

Wager. A wager consists of mutual promises between two persons that one will pay the other a certain sum of money if a certain event happens or is ascertained to have happened. At common law a wager constituted a good contract, unless it was contrary to public policy, morality or the like; but by the Gaming Act, 1845, s. 18, all contracts by way of gaming or wagering are null and void, except so far as concerns subscriptions or contributions for prizes or money to be awarded to the winner of any lawful game, sport, pastime or exercise. There is nothing illegal in a wager: it is merely not enforceable. See UNLAWFUL.

Numerous questions have arisen as to the lawfulness of speculative transactions on the Stock Exchange, especially as regards "time-bargains" and "differences." A time-bargain is in form a contract to buy or sell shares or other securities, with an agreement (contemporaneous or subsequent) that the sale shall not be really carried out by delivery of the securities, but that one party shall pay to the other the difference between the market price of the security on the day when the contract was made and the day fixed for its performance. It is, therefore, a wager on the price of the security. The term "difference" is generally applied to the case where a person employs a broker to buy or sell stock for him on the understanding that when the day for completing the transaction arrives, the broker shall re-sell or re-buy the stock, and that the employer shall take the profit or bear the loss.

A time-bargain is void as between the parties to it, but if a broker is employed to speculate in stocks, he can recover from his employer brokerage and "differences" in respect of all genuine contracts for buying and selling stock which he enters into with other persons.

Wagering Policy. A policy effected on a life, ship, house, etc., in which the insurer has no insurable interest. See INTEREST.

Wager of Law. Compurgation (q.v.). Another "wager by law" was trial by battle See BATTLE.

Wages are money payable by a master to his servant in respect of services. (See MASTER AND SERVANT; SERVICE; TRUCK ACTS.) Some wages are preferential debts in bankruptcy (see DEBT). With reference to seamen's wages, the general rule used to be "freight is the mother of wages," so that if no freight was received no wages were payable; but this rule was abolished by the Merchant Shipping Act, 1854, s 183, which is now replaced by the Merchant Shipping Act, 1894, s. 157. Seamen have a lien on the ship and freight for their wages. Claims for wages may be enforced by action *in rem* or *in personam*. Justices of the peace have jurisdiction in claims for wages up to £50 (Merchant Shipping Act, 1894, s. 164). The wages of a master are on the same footing as those of ordinary seamen (*ib.* s 167).

No "wages of any servant, labourer or workman" can be attached by order of "any Court of record or inferior Court" (Wages Attachment Abolition Act, 1870).

Waifs, *bona waviata*, are stolen goods which are waived or thrown away by the thief in his flight, for fear of being apprehended. They belong to the owner, if he follows and apprehends the thief or prosecutes him to conviction; otherwise they belong to the Crown. (See PREROGATIVE; FRANCHISE; FUGITIVES' GOODS.) In very ancient times a woman who failed to answer an accusation was waived, that is to say, was declared a waif. This had the effect of making the Crown, or lord of franchise, entitled to seize the woman as if she were *bona waviata*. A woman could never be outlawed. See WAIVE; OUTLAWRY.

Wainable. Gainable (q.v.).

Wainagium; Wainage. Implements of husbandry. See GAINAGE.

Waiting Clerks. These were officials of the Court of Chancery who, having served under articles of apprenticeship for three years with one of the Sixty Clerks, were admitted to perform duties analogous to those of their masters, and they were appointed as sworn clerks when vacancies arose. They, along with the Six Clerks and the Sixty Clerks (see those titles), were abolished by the Court of Chancery Act, 1842, s. 1.

Waive; Waiver.—I. A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when he abandons the remedy which the law gives him for it. A waiver may be either express or implied. Thus, if a tenant commits a breach of covenant, and thereby makes the lease liable to forfeiture, the lessor may waive the breach either by promising not to take advantage of it, or by receiving rent after knowing of the breach: the former is an express, the latter an implied, waiver. Formerly, if a lessor waived a right of re-entry for a breach of covenant, or the like, this operated as a waiver in law of all future breaches, so that the right of re-entry was destroyed. This rule was abolished in 1859: see APPORTIONMENT.

II. "A man," says Coke, "which is outlawed is called outlawed, and a woman which is outlawed is called waived, *waviata* and not *utlegata* or *exlex*, for that women are not sworne in leets or tornes, as men which be of the age of twelve yeares or more be: and therefore men may be called *utlegati, id est, extrà legem positi*, but women are *waviatæ, id est, derelictæ*, left out or not regarded, because they were not sworne to the law" (*Co. Litt.* 122B). See WAIFS.

Waiver Clause. This was a clause frequently found in an application for shares in a company registered under the Companies Acts, until it was made void by s. 81 (4) of the Companies (Consolidation) Act, 1908. The clause bound the applicant to forego all claims or damages which, apart from the clause, would arise by reason of the non-disclosure in the prospectus of material contracts, etc.

Wake. An assemblage of persons, especially at night, to watch round a corpse between the death and the burial. Now practically unknown in England. Forbidden, in case of death from infectious disease, by s. 68 of the Public Health Acts Amendment Act, 1907.

Wakeman. Literally, a watchman. Before the Reformation it was the title of certain officers of the town of Ripon, in Yorkshire, who, amongst other things, looked after the shrine of St. Wilfrid: afterwards, until 1604, it was the title of the official in Ripon who corresponded to the mayor of later times.

Wales. The Statutum Walliæ (1284) (12 Edw. I. st. 1) created the counties of Anglesea, Carnarvon, Merioneth, Flint, Carmarthen

and Cardigan out of the "Land of Snowdon" (that is to say, the territory held down to 1282 by Llewelyn), and enacted that the "Justice of Snowdon" should have jurisdiction within them. The rest of Wales was under the jurisdiction of the Lords Marchers (q.v.) who had been given the right of holding their own Courts.

In 1536 the statute 27 Hen. 8, c. 26, which incorporated Wales with England, established the English county of Monmouth and the Welsh counties of Brecon, Radnor, Montgomery and Denbigh, and the same statute regularised the position of the Welsh counties of Pembroke and Glamorgan.

In 1543 the statute 34 & 35 Hen. 8, c. 26, established the "King's Great Sessions in Wales," which (see ss. 3-6) performed in all the twelve Welsh counties functions corresponding to those of assizes in England. These two Acts of 1536 and 1543 made the English law, but not the authority of the English Courts, prevail in Wales, and practically abolished the jurisdiction of the Lords Marchers. The Court of Great Sessions came to an end in 1830. In 1798 it was divided into four circuits, and there were eight judges with salaries amounting in the aggregate to £6,580 a year (*Commons Committees Reports*, 1803, Vol. 13, p. 203, 209-219).

See CHESTER; COUNCIL OF WALES; MARCHERS, LORDS; MONMOUTHSHIRE; RATIONABILE PARTE; WELSH CHURCH.

Walescheria. In the statute 12 Edw. 1 (Stat. Walliæ), cc. 3, 5, this word is defined to mean the [Welsh] kindred of a murdered man.

Waltham Black Act. A fuller popular title of the Black Act (q.v.).

Waltham Blacks. A popular name for the gang against which the Black Act (q.v.) was directed.

Wapentake in the northern counties is equivalent to a hundred (q.v.).

War Charities. The War Charities Act, 1916, s. 10, defines "war charity" as meaning "any fund, institution or association . . . having for its object or amongst its objects the relief of suffering or distress, the supply of needs or comforts or any other charitable purpose connected with the present war." To make any appeal, except in a place of public worship, for any war charity, unless the charity is registered or exempted from registration pursuant to the Act, is an offence (s. 1) punishable summarily with not more than three months' imprisonment or a fine not exceeding £100 (s. 9). The Act provides for registration and for the proper management of war charities. The Charity Commissioners are given extensive powers. See BLIND PERSONS.

Ward; Wardship. A ward is an infant who is under the care of a guardian (q.v.). Wardship is the condition or status of a ward.

If an action, suit or other proceeding relative to an infant's estate or person, and for his benefit, be instituted in the Chancery Division of the High Court, the infant, whether plaintiff or defendant, immediately becomes a ward of Court, although its father or testamentary guardian may be living. Thus, the institution of an action for the administration of property in which an infant is interested, or the payment into Court, under the Trustee Act, 1893, s. 42, of a fund in which he is interested, makes him a ward of Court. A ward of Court cannot be taken out of the jurisdiction of the Court, nor can any change be made in his or her position in life (as by marriage, adoption of a profession, etc.), without leave of the Court, and the details of his or her education and maintenance are regulated by the Court, namely, a judge of the Chancery Division sitting in chambers.

In the law of tenure, wardship was the right to the custody of the land, and in some cases also of the person, of an infant heir of land. The right was a chattel real. As to its nature and varieties, see GUARDIAN.

See COURT OF WARDS, ETC.

Wardage. Payments made for the maintenance of WATCH AND WARD (q.v.).

Warden literally means a keeper; but generally the term is used to denote an officer of the Crown. (See CINQUE PORTS; STANNARIES; MARCHES; DIES MARCHIÆ.) The master of a city company is sometimes termed a prime warden, and other members of the "court of assistants," or governing body of the company, are also termed wardens. In the Society of Apothecaries (q.v.) there are a master, two wardens, etc. (Apothecaries Act, 1815, Preamble).

Warden of the Forest. See FOREST.

Wardens of the Peace. The same as CONSERVATORS OF THE PEACE (q.v.). See *Lamb: Eiren. Lit.* 1, c. 3.

Wardmote. See LONDON.

Wardpenny. Wardage (q.v.), also an annual payment made to a feudal superior as a commutation of military service.

Wards. The City of London has from an early period been divided into wards. See LONDON.

In all boroughs except those of minute size

there are also for electoral purposes divisions known as wards. The Municipal Corporations Act, 1835, provided (s. 40) in appropriate cases for the delimitation of such divisions and (s. 40) for the allotment to each of them of various numbers (divisible by three) of councillors. That Act was repealed (with, of course, a saving for the arrangements made under it) by the Municipal Corporations Act which by s. 30 (as altered by the Municipal Corporations Act, 1893, s. 2) provided for future division into wards and for the alteration of existing wards; by s. 45 (5) for the preparation of a separate roll of burgesses in each ward; by s. 50 for a separate election of councillors for each ward; and, by s. 51, that no burgess should vote in more than one ward.

Wards have been formed in the larger parishes and the larger urban districts, for the purposes of various local government elections, in pursuance of various provisions of the Local Government Acts, 1888 and 1894.

Wardwit; Warwit. This seems to have meant, in some contexts, freedom from wardage and, in others, a fine for not maintaining watch (q.v.) and ward.

Warehouse. As used in, for instance, the Customs Consolidation Act, 1876, this means a store in which dutiable goods may be deposited without payment of duty until they are re-exported—in which case no duty is payable—or until they are taken out for consumption in this country. See DRAWBACK.

Warehousing System. The use of warehouses (q.v.) for Customs purposes. It has been in operation since 1803. See the statute 43 Geo. 3, c. 132.

Waring, Ex parte. This case (reported 19 *Ves.* 345) was as follows:—Bracken & Co. had an account with bankers named Brickwood, drawing upon them by bill, and lodging in their hands from time to time securities against their drafts. Brickwoods became bankrupt on the 7th July, 1810, being then liable on acceptances for Bracken & Co. to the amount of £24,000, and having in their hands a cash balance of £6,700, and securities worth a considerable sum. On the 2nd August, 1810, Bracken & Co. also became bankrupt. Almost all the acceptances were proved against both estates, and the holders received dividends on Brickwoods' estate to the amount of £3,400. An application was then made by Waring and other holders of Brickwoods' acceptances, that the assignees (or the trustee in bankruptcy, as we should say now) of Brickwoods' estate might be ordered to pay to the petitioners and the other holders of the acceptances, the cash balance, less the dividends received by the petitioners (£6,700, less £3,400 = £3,300), and also the proceeds of the securities held by Brickwoods, towards satisfaction of the amount due on the acceptances. An order to this effect was accordingly made, on the ground that the securities were applicable in clearing the estate of Brickwoods from the liability on the acceptances, and that therefore, to avoid circuity, the securities should be given up to the holders of the acceptances: in other words, the securities held by the banker were made available to the bill holders, not directly, or as having a claim on the securities in respect of the acceptances by them, but through the equity (that is, the equitable rights and obligations) between the banker and the customer.

The rule in *Ex parte Waring* only applies—(i) where there is a double insolvency; and (ii) where there has been a specific appropriation of securities.

Warning. See CAVEAT.

War of 1914-18. For legal purposes this terminated on 31st August, 1921. See DEFENCE OF THE REALM.

War Office. The Government department of which the Secretary of State for War is the head. See SECRETARY OF STATE.

Warping. A means of fertilising land adjoining a tidal river and lying below high-water mark and above low-water mark. The land is artificially flooded through a sluice in an embankment and the water is not discharged until any sediment suspended therein has been deposited on the land. Capital moneys arising under the Settled Land Acts may be expended on warping (Settled Land Act, 1882, ss. 21 (iii), 25 (ii)). Warping by a tenant is an improvement in respect of which the tenant cannot claim unless the landlord had consented in writing to the warping (Agricultural Holdings Act, 1908, s. 2, Sch. I., Pt. I.).

Warrant. In its primary sense, a warrant is an authority.

As to the warrant required for the use of the GREAT SEAL, see that title.

As to warrants for the delivery of goods, see DOCK WARRANT; DELIVERY ORDER. As to share warrants, see SHARE. See also WARRANT OF ATTORNEY.

Warrants are used in executing process both in civil and criminal cases.

In ordinary actions, when a sheriff does not execute a writ either personally or by his under-sheriff, he must authorise a bailiff to

execute it; and this authority is given by a document called a warrant. See BAILIFF.

The Criminal Procedure Act, 1853, s. 9, enables a judge of the High Court to issue a warrant for bringing up any prisoner or person committed for trial, to be examined as a witness in any Court; and the Prisons Act, 1898, s. 11, gives like power to the Home Secretary. See HABEAS CORPUS.

Under the old practice of the Admiralty Court, a warrant in a cause *in rem* corresponded to and was almost in the same words as the writ of summons in an Admiralty action *in rem* under the present practice. As to the warrant of arrest in an Admiralty action, see ARREST.

A warrant may be issued by a justice to arrest:—

(1) A person accused of an indictable offence (Indictable Offences Act, 1848, s. 1).

(2) A person accused of an offence punishable summarily (Summary Jurisdiction Act, 1848, s. 2).

(3) A witness who will not voluntarily attend a hearing before justices (Indictable Offences Act, 1848, s. 16; Summary Jurisdiction Act, 1848, s. 7).

Under the Acts governing the hearing before justices of charges triable summarily or on indictment there are other warrants, which cannot be dealt with here, such as distress warrants (authorising the levy of a penalty by distraint and sale of a defendant's goods), warrants of commitment of a defendant to prison, etc.

See ARREST; BACKING A WARRANT; BENCH WARRANT; EXTRADITION; SEARCH WARRANT.

Warrantia chartæ was a real action which lay to enforce a warranty of title to land where the tenant was unable to avail himself of the warranty by voucher (q.v.). It was abolished by the Real Property Limitation Act, 1833, s. 36. See WARRANTY.

Warrantia diei. A writ which formerly lay for the protection of one who was bound to appear on a certain day in an action but who was employed on the king's service so that he could not come.

Warrant of Attorney originally meant the same thing as a power or letter of attorney, but at the present day the term is used only to denote a written authority from a person enabling the person to whom it is given (the attorney) to enter an appearance for him in an action, and to allow judgment to be entered for the plaintiff, or to suffer judgment to go by default. Such a warrant is usually given to secure the payment of a sum of money, and is therefore qualified by a condition that it shall only be put in force if the debt is not paid by a certain day; this condition is expressed in a document called the defeasance, which also usually contains various stipulations designed to facilitate the execution of the judgment when obtained. The defeasance must be written on the same paper or parchment as the warrant (Debtors Act, 1869, s. 26), and its execution requires to be attested by a solicitor, who must explain the nature of the document to the debtor before he signs it (*ib.* s. 24). It must be filed within twenty-one days of its execution (*ib.* s. 26). Warrants of attorney are not now of such frequent occurrence as formerly.

A warrant of attorney is given in contemplation of proceedings being necessary. A *cognovit* (q.v.) is given after proceedings have been commenced.

Warranty. This means "an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated" (Sale of Goods Act, 1893, s. 62 (1)); but "whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, depends in each case on the construction of the contract"; and "a stipulation may be called a condition though called a warranty in the contract" (*ib.* s. 11 (1) (*b*)). For further particulars see ss. 10-15 generally of the Sale of Goods Act, 1893.

A warranty of goods may constitute a defence to a criminal charge: see, for instance, the Rag Flock Act, 1911, s. 1.

In the law of marine insurance, what is called a warranty is in fact a condition. See the Marine Insurance Act, 1906, ss. 33-41, and especially s. 33, which provides for the release of the insurer from liability, unless the policy contains a provision to the contrary, if the warranty is not exactly complied with. The most usual express warranties are, that a ship is safe on a given day, and that she will sail or depart on a given day. The most important implied warranty is that the vessel is seaworthy at the commencement of the risk (see s. 39). Warranty of documentation is a warranty that she has those documents which are required by international law or treaty to establish her national character. A continuing warranty is one which applies to the whole period during which the contract is in force:

thus, an undertaking in a charterparty that a vessel shall continue to be of the same class that she was at the time the charterparty was made is a continuing warranty.

When a man holds himself out as the agent of another he is deemed to warrant his authority to act as agent, and if, and in so far as, he is without such authority as he purports to have, an action for breach of warranty of authority will lie against him for one damnified by such absence of authority.

In the old law of real property, warranty was an obligation by the feoffor or donor of land (or other hereditaments) to defend the feoffee or donee in the possession of the land, and to give him land of equal value if he was evicted from it. A warranty was a real covenant. (See COVENANT.) Warranties were either in deed, that is, expressed; or in law, that is, implied. Warranties in deed were of three kinds. (1) Lineal warranty was where the heir of the warrantor was, or might by possibility have been, entitled to the land by descent from the warrantor; this happened if a man seised of lands in fee made a feoffment of them by deed and bound himself and his heirs to warranty, and died, so that the warranty descended to his heir, who would otherwise have inherited the land. (2) Collateral warranty was where the heir of the warrantor could not by any possibility have been entitled to the land by descent from the warrantor; thus, if a younger son released with warranty to his father's disseisor, this warranty was collateral to his elder brother, because by no possibility could the latter in such a case claim the land as heir to his younger brother. (3) Where the conveyance to which the warranty was annexed immediately followed a disseisin, or operated itself as such (as where a father, being tenant for years with remainder to his son in fee, aliened in fee simple with warranty), this was called a warranty commencing by disseisin, and did not bar the heir of the warrantor.

The operation of a warranty as against the heir of a warrantor in case the warrantee was evicted from the land was to compel him to yield the warrantee other lands in its stead, to the extent of any land which had descended to him from the ancestor; and if he had no land by descent, then he was barred of all claim to the land warranted. This operation, however, was from time to time restrained by various statutes; and voucher (q.v.) and the writ of *warrantia chartæ* (q.v.) were both abolished by the Real Property Limitation Act, 1833, s. 36, so that a warranty of land is now entirely inoperative. A fictitious warranty was the foundation of the proceeding called a common recovery (q.v.), now also abolished. (See RECOVERY.) Warranty was implied in certain cases; thus, the word "give" in a feoffment created a warranty binding on the feoffor during his life; and an exchange at common law created an implied warranty (see EXCHANGE); these and all other implied warranties were abolished by the Real Property Act, s. 3. See ASSETS BY DESCENT; REBUTTER.

Warren is the privilege of keeping and killing certain kinds of animals (especially hares and rabbits) on a piece of ground. As to what are beasts of warren, see GAME. A warren in the hands of a private person (sometimes called a free warren) is a franchise (q.v.); it may be claimed either by royal grant or prescription, and may exist either in the lands of the owner of the warren, or in those of another person.

The owner of a warren has a qualified property in the animals belonging to it, so that no other person can acquire a property in them either by taking them within the warren, or by chasing them thence and taking them on other ground. See ANIMALS FERÆ NATURÆ; FOREST; GAME.

The word warren, as used in s. 17 of the Larceny Act, 1861, is impliedly defined by that section as "ground lawfully used for the breeding or keeping of hares or rabbits, whether enclosed or not."

Waste.—I. In the law of real property, waste is, properly speaking, land which has never been cultivated, as opposed to pasture and arable land, etc. The most important kind of waste is manorial waste, or that part of a manor which is subject to the tenants' rights of common, and hence "waste" is sometimes used improperly to denote any land subject to rights of common or similar rights, although under cultivation. (See COMMON; COMMONABLE; LAMMAS LANDS; MANOR; OPEN FIELDS; SHACK.) The soil of a manorial waste is vested in the lord of the manor, and he therefore is entitled to pasture his cattle on it. He is also entitled to the minerals under the waste, and may work them so that he do not unduly interfere with the commonable rights of the tenants. As to the inclosure of waste lands, see APPROVEMENT; INCLOSURE.

II. In the law of torts, waste is whatever does lasting damage to the freehold or inheritance of land, or anything which alters the nature of the property so as to make the

proof of ownership more difficult, or to destroy or weaken the proof of identity, or diminish the value of the estate, or increase the burden upon it. It is either voluntary or permissive—the former being an offence of commission, such as pulling down a house, converting arable land into pasture, opening new mines or quarries, etc.: the latter is one of omission, such as allowing a house to fall for want of necessary repairs, allowing land to remain flooded with water, etc.

A copyhold tenant may not commit waste upon the lands he holds. A freehold tenant in fee simple or fee tail, on the other hand, may commit as much waste as he likes; but the general rule is, that a tenant for life of freehold land is impeachable for waste, that is, he may not commit waste unless his estate is without impeachment of waste (or sans waste), as where it is expressly so given to him. (See TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT.) But there are certain kinds of waste which Courts of Equity would always prevent, even where the tenant for life was unimpeachable for waste, and which are hence known as equitable waste: cutting down ornamental timber, and pulling down buildings, are instances of equitable waste: where, however, a tenant for life pulls down a building and erects a new one in such a way as to effect an improvement, the Court will not interfere, this being what is called "meliorating" or "ameliorating waste."

The remedy for waste is an action for damages or an injunction.

Watch and Ward. In the old books, one of the principal duties of constables is described as that of keeping watch and ward; "ward" being used to signify the duty of apprehending rioters and robbers during the day-time, while "watch" is properly applicable to the night. See CONSTABLE; RATE.

Watch Committee. In a borough with a population exceeding 10,000 according to the census of 1881 (see the Local Government Act, 1888, s. 39 (1) (*a*)), which is subject to the Municipal Corporations Act, 1882, the town council appoint not more than one third of their body to form, along with the mayor, the Watch Committee (s. 190), which controls the borough police (ss. 191, 192).

Watches. A customs duty at the rate of thirty-three and one-third per cent. is payable on imported watches and clocks (Finance (No. 2) Act, 1915, s. 12). See also MERCHANDISE MARKS.

Water is either public or private. Public waters are the sea and its branches, and navigable rivers, the beds of which belong *primâ facie* to the Crown. As a rule the soil of estuaries and of rivers (whether navigable or not) in which the tide ebbs and flows is vested in the Crown. (See HIGH SEAS; KING'S CHAMBERS; RIVERS.) Private waters are rivers, streams, lakes and ponds, etc., the beds of which belong to private persons. *Prima facie* the soil of non-tidal rivers and lakes belongs to the owners of the adjoining land. Public waters are, as a rule, subject only to the public right of navigation, and to the right of access possessed by the owners of the adjoining shores or banks. (See ACCESS; FRONTAGE; NAVIGABLE; RIPARIAN.) As to the right of fishing in public waters, see FISHERY. As to territorial waters, see TERRITORIAL.

Private waters may be subject to a right of navigation by the public, as in the case of the Severn and other rivers.

The distinction between public waters and private waters subject to a public right of navigation is that in the case of the latter the owners of the soil may (as against the public) do what they like with the water and its bed so long as they do not obstruct the navigation.

Private waters passing through or between the lands of different proprietors may be subject to two kinds of rights, natural and acquired. Natural or proprietary rights are those possessed by every riparian proprietor, and consist principally in the right to have the water flow in its accustomed manner, without sensible disturbance or diminution by the superior and inferior riparian proprietors, and the right to the reasonable use of the water while it is flowing past his land, including its use for domestic purposes, for turning mills, etc. The law is the same with regard to subterranean water flowing through a defined channel: but with regard to water which merely percolates through gravel, etc., the law is different, and a landowner can appropriate such water to the exclusion of a neighbour under whose land it would otherwise percolate, although he may not so deal with it that it flows under his neighbour's land in a polluted state. Acquired rights are those easements which entitle a riparian proprietor to interfere with a natural stream of water to an extent not justified by his natural or proprietary rights, *e.g.*, by diminishing or obstructing the flow of water, or by polluting it, etc., or which entitle him to the use of an artificial watercourse (q.v.) Acquired rights in respect of water may exist in the inhabitants of a district by

virtue of a custom. As to the right of fishing in private waters, see FISHERY.

Water covering and surrounded by land belonging to one proprietor is not the subject of any special rights. It is not considered as part of the soil, and therefore a right to go on a man's land and take water from it is an easement and not a *profit à prendre*; and if a man grant to another a piece of water on his land, all that the grantee takes is the right of fishing in it. The proper legal description of a pond or the like is "land covered with water."

Water supplied through pipes in return for payment is, like gas, capable of being stolen so that the offence of larceny is committed.

For other points connected with water, see ACCRETION; ALLUVION; CONSERVATORS OF RIVERS; DERELICTION; FERRY; FORESHORE; FRONTAGE; SHIP.

Water-bailiff. Formerly this meant an officer in a seaport town whose duty it was to search ships; and in the City of London it was the title of an official who supervised fishing boats coming to the Thames, collected river tolls, acted as master of the ceremonies to the Lord Mayor, and arrested, for debt or in criminal matters, persons on the river. Now it means an official entrusted with the enforcement of the Acts for the preservation of salmon (Salmon Fishery Act, 1873, s. 36), and all freshwater fish (Freshwater Fisheries Act, 1884, s. 3).

Watercourse. In the proper sense of the word, a watercourse is an artificial channel (whether above or below ground) by which water is led from or over the land of one person to or over that of another. The right of watercourse, in this sense of the word, is therefore the right of receiving or discharging water through another person's land, and is an easement, the tenement for the benefit of which the watercourse exists being the dominant tenement. (See EASEMENT.)

In some cases, however, it seems that where a watercourse passes over land for the discharge of water from the dominant tenement, the owner of the servient tenement may be entitled to have the flow of water through the watercourse uninterrupted, so that the dominant owner cannot stop or divert it. In such a case there are correlative easements, each tenement and owner being dominant or servient, according to the easement which is in question: and the watercourse is, in law, practically undistinguishable from a natural stream.

The term "watercourse" is also sometimes applied to natural streams. **The rights of receiving and discharging the water of a natural stream over the land of adjoining proprietors are not easements, but natural rights.** See WATER.

Water Gavel. A rent paid for water or for fishing rights. See GAVEL.

Water-guard. See COASTGUARD.

Water Measure. A measure formerly used for the sale of coals in the Pool of London. It was larger than Winchester measure (q.v.).

Watermen. The Thames watermen were persons who used to ply upon the Thames, from Gravesend to Windsor, with small rowing boats, for the conveyance of passengers from shore to shore and up and down the river. They had from ancient times a monopoly of this business, and were a company known as the Company of Watermen. They and the lightermen, or men who worked with lighters, were formed into one company, under the name of the Watermen's and Lightermen's Company, by the statute 11 & 12 Will. 3, c. 21, which, together with nine other Acts, is recited in the preamble to the statute 7 & 8 Geo. 4, c. lxxv. The Act of George IV., after repealing most of the Acts recited in it, made the company a body corporate with important powers of registering boats, licensing watermen and lightermen, and regulating water traffic. All these powers—or such of them as had survived intermediate legislation—were transferred to the Port Authority by the Port of London Act, 1908, s. 11, which, however, still left the company their Hall—known as Watermen's Hall—a couple of adjoining houses and certain funds to the value of about £10,000. The company is not, and never was, one of the Livery Companies. See COMPANIES, CITY.

Waveson. Floating wreckage: apparently the same as flotsam. See JETSAM.

Waviata. See WAIFS.

Waxscot. See CERAGE.

Way. A right of way is where a person has the right of passing through or over land not belonging to him.

Ways are either public or private. Public ways are more commonly called highways (q.v.).

Private rights of way are of various kinds. They may be limited (1) as to the intervals at which they may be used, *e.g.*, a way to church or market; (2) as to the actual extent of the user authorised, *e.g.*, a foot-way, horse-way, cart-way, carriage-way, a way for driving cattle, or drift-way, a way for carrying coals, etc.; and (3) as to the nature of the tenement

to which the way is claimed, *e.g.*, a way to a shed used for storing wood.

As to ways of necessity, see EASEMENT.

A private right of way is either an easement (q.v.) or a customary right.

The obstruction of a private way is a disturbance (q.v.); the obstruction of a public way is a nuisance (q.v.).

Way-going Crop. See AWAY-GOING.

Wayleave is a right of way over or through land for the carriage of minerals from a mine or quarry. It is an easement (q.v.), being a species of the class called rights of way (see WAY), and is generally created by express grant or by reservation. A wayleave rent may be a fixed annual sum, or a sum payable according to the quantity of minerals drawn over the way, or a combination of the two. See RENT.

"'Mineral wayleave' means any wayleave, airleave, waterleave or right to use a shaft granted to or enjoyed by a working lessee, whether above or under ground, for the purpose of access to or for the conveyance of the minerals, or the ventilation or drainage of the mine, or otherwise in connection with the working of the minerals" (Finance (1909-10) Act, 1910, s. 24).

Waynagium. The same as Wainagium.

Waywardens. The Highways Acts provided that in every parish forming part of a highway district there should annually be elected one or more waywardens. The waywardens so elected, and the justices for the county residing within the district, formed the highway board for the district. Each waywarden also represented his parish in regard to the levying of the highway rates, and in questions arising concerning the liability of his parish to repairs, etc. But now there are no waywardens and no highway board, the rural district council (Local Government Act, 1894, s. 25 (1)) being now the highway authority.

Weald. A wood. The Weald of Kent is a part of the county which formerly was densely wooded.

Weights and Measures. The Weights and Measures Act, 1878, enacts that the same weights and measures shall be used throughout the United Kingdom. It established standards of weights and measures, and provides that all contracts, sales, etc., made in the United Kingdom for any work, goods, etc., by weight or measure, shall be deemed to be made and had according to those weights and measures, and if not so made shall be void. It also imposes penalties on persons using or having in their possession unjust measures or weights. It has been amended by the Weights and Measures Acts, 1889, 1892, 1893 and 1904. See also METRIC SYSTEM.

Before 1824 there was no uniform system of weights and measures. Sale by customary and local weights and measures was usual and legal. The Weights and Measures Act, 1824, enacted by s. 15, that, as from 1st May, 1825, all contracts for the sale of goods should, unless the contrary was specified, relate to the standards of weights and measures established by that Act. The Act of 1824 (except s. 25, which is unimportant) and the various Acts extending and amending it, were all repealed by the Act of 1878, which for the first time made it impossible to sell except by standard weights and measures.

See the titles of the various weights and measures. See also ASSISA DE PONDERIBUS.

From time immemorial corn has been sold in England by the bushel and the quarter (q.v.), that is to say, by measure of capacity. Now under the Corn Sales Act, 1921, ss. 1, 7, corn in any quantity weighing not less than one hundredweight must (except in certain specified cases) be sold by weight only, as from 1st January, 1923; and s. 6, in addition to giving a comprehensive definition of "corn," provides that many other things, such as potatoes and flax, must be sold in like manner.

Weiring. The same as warping (q.v.).

Welsh Church. The Church of England, in so far as it existed in Wales (including Monmouthshire) was, as from 31st March, 1920, disestablished by the Welsh Church (Temporalities) Act, 1919, s. 2. As to the dioceses affected, see BISHOPRICS. This disestablishment was provided for by the Welsh Church Act, 1914, the operation of which had been postponed by the Suspensory Act, 1914. As from 31st March, 1920, every ecclesiastical corporation in Wales became dissolved pursuant to the Welsh Church Act, 1914, s. 2; and, under s. 3 of that Act the ecclesiastical law and the ecclesiastical courts ceased from that date to operate in Wales.

Under the two Acts the Church in Wales was deprived of its emoluments, but provision was made for the transfer to a "representative body" of churches, parsonages, certain of the endowments and also a sum of £1,000,000 in respect of the commutation of existing interests of individuals: and the representative body has been authorised, by Royal Charter (granted 15th April, 1919, pursuant to s. 13 (2) of the Welsh Church Act, 1914), to hold land in mortmain. Reference should be made

to the Acts of 1914 and 1919, the Welsh Church Rules, 1919, and the Charter for further details.

Welsh Commissioners. Three persons, of whom one at least must be a member of the Church of England, appointed (at salaries of £1,500 for one of them and of £1,000 for the two others) pursuant to the Welsh Church Act, 1914, s. 1, for the purpose of carrying out the disestablishment of the Welsh Church. They are to hold office up to such date as may be fixed by Order in Council (Welsh Church (Temporalities) Act, 1919, s. 1).

Welsher. One who takes from another money as a deposit for a bet made with him, intending not to pay what the other may win and to retain the deposit for himself, and who, in fact, carries out this course of business. This is larceny by a trick: and if the word is used in its accurate sense it is actionable without proof of special damage. But to call a politician a welsher because he gets into power by promises which he does not keep, is not actionable *per se*.

Welsh Insurance Commissioners. See INSURANCE COMMISSIONERS.

Welsh Mortgage. See MORTGAGE.

Wer; Were. Money paid as compensation for injury under the Anglo-Saxon Laws.

Wergild. Compensation for personal injury.

Westbury's Act, Lord. The popular title of the Land Registry Act, 1862. See LAND REGISTRIES.

Westminster the First, Statute of. This is the name of the fifty-one chapters (each corresponding to what is now called an Act of Parliament) passed in 1275.

Westminster the Second, Statute of. The fifty "chapters" passed in 1285. The first of them is the statute DE DONIS, ETC.; see ESTATE TAIL.

Westminster the Third, Statute of. See QUIA EMPTORES.

Westmorland. The office of sheriff of this county was granted by King John to Robert de Veteripont and his heirs. Under this grant and various conveyances the office descended to Henry, Earl of Thanet, who died in 1849 without issue. He purported to devise the office by his will, but doubts arose as to whether it passed under this devise, or whether it passed to his heir, or whether it escheated to the Crown. The matter was settled by the statute 13 & 14 Vict. c. 30, which abolished all hereditary claim to the office and vested the appointment in the Crown as in other counties. The Sheriffs Act, 1887, s. 31, finally put the sheriff of Westmorland in precisely the same legal position in all respects as other sheriffs.

While the shrievalty was hereditary, it descended to females as well as to males; and Coke states that one female holder of the office performed it in person.

West Saxonlage. The laws of the West Saxons. See DANELAGE.

Whales. See ROYAL FISH.

Wharf. This expression is defined, for the purposes of the Merchant Shipping Act, 1894, by s. 492 of that Act. The Larceny Act, 1916, s. 15, deals with larceny from wharves, and the Malicious Damage Act, 1861, s. 31, with malicious damage to them.

Wharfinger. For definition see the Merchant Shipping Act, 1894, s. 492, and the Port of London Act, 1908, s. 49.

Whip. The whip (or more fully, the whipper-in) of a pack of hounds is a man whose function it is to keep hounds from skirting, hunting rabbits, and doing other things which lessen the efficiency of the pack. The term is also applied to the members of Parliament who are detailed by the leaders of the various political parties for the duty of keeping other members of their party up to their work. See LORD TREASURER.

Whipping. This was a recognised part of the common law punishment for misdemeanours, and down to the enactment of the Whipping Act, 1820, it could be inflicted on women as well as on men. Now, under s. 36 of the Criminal Justice Administration Act, 1914, no person can be whipped except under a statutory enactment. Such enactments are very numerous, more especially as regards boys under sixteen. As regards adult males, see, for instance, GARROTTING and TREASON.

No offender can now be whipped more than once for the same offence (Criminal Justice Administration Act, 1914, s. 36). See CAT.

Whirligig. See s. 36 of the Public Health Acts Amendment Act, 1890, as to the powers of urban authorities regarding steam-driven whirligigs, swings, roundabouts and merry-go-rounds. As to rural authorities, see ss. 5, 50.

White Book of London. Printed under the title of the *Liber Albus* in No. 12 of the Rolls Series. It sets out the mediæval customs and laws, including the maritime laws, of the City of London.

Whitecross Street Prison. A debtors' prison belonging to the sheriffs of London and Middlesex, to which the debtors, etc., confined in the Queen's Prison (q.v.) were removed in 1862. It ceased to be used after Holloway Prison was substituted in pursuance of s. 12

of the Queen's Prison Discontinuance Act, 1862.

Whitefriars. See PRIVILEGED PLACES.

White Lyon Prison. See COURT OF CHIVALRY.

White Meats. These are milk, eggs, butter and cheese and anything of which any of those things is an ingredient. The use of white meats during Lent was prohibited before the Reformation and up to 1643, when Henry VIII. sanctioned it by proclamation. See PROCLAMATIONS, ROYAL.

White Phosphorus. See MATCHES.

White Rent. See ALBA FIRMA.

White Rod. See USHER.

White Spur. A kind of esquire was formerly so described.

Whit Sunday. The seventh Sunday after Easter Sunday (q.v.). See FAST DAYS; FEASTS.

Whitsuntide Farthings. The same as Pentecostals (q.v.).

Widow of the King. The same as king's widow (q.v.).

Widow's Chamber. Until the statute 19 & 20 Vict. c 94, abolished all special customs as to the distribution of the estates of intestates, the widow of an intestate freeman of the City of London was entitled to the "widow's chamber," that is to say, her wearing apparel and the furniture of her bedchamber.

Wife, Coercion of. A wife committing any crime in the presence of her husband is, as a general rule, presumed to have acted under the coercion of her husband and therefore not be criminally responsible. This presumption never applied to specially heinous crimes, such as treason, murder or manslaughter, or to crimes, such as the keeping of a brothel, which involve an abuse of peculiarly feminine functions. It has been extended to some misdemeanours, such as the uttering of base coin: but to them it does not apply as certainly as it does to felonies generally. The presumption may in every case be rebutted; it does not arise where the husband is proved to have been physically incapable of coercion; and it does not apply where the wife commits a crime by the order of her husband but not in his presence.

The presumption dates from the period when the average wife did in fact obey her husband. It has in recent years led to the acquittal of women in cases where, apart from the presumption, there would have been no question of coercion; and an alteration of the law is evidently desirable.

Wild Animals. See ANIMALS FERÆ NATURÆ.

Wild Birds. All birds other than game and domestic fowl are wild birds for the purposes of the Wild Birds Protection Acts, 1880 to 1908. The Wild Birds Protection Act, 1880, s. 3, makes it an offence to kill between 1st March and 1st August any wild bird which is included in the Schedule to that Act, or which is added to that Schedule pursuant to s. 3 of the Wild Birds Protection Act, 1894; but s. 3 of the Act of 1880 authorises the owner or occupier of any land, or any one authorised by him, to kill on such land any other wild bird at any time, although it prohibits the killing of any wild bird by other persons between 1st March and 1st August. The Wild Birds Protection Act, 1894, provides for the protection of the eggs of any wild bird specified in an order made pursuant to that Act. The use of pole traps (that is to say, spring traps on the tops of poles, etc.) was prohibited by the Wild Birds Protection Act, 1904. The Wild Birds Protection Act, 1908, forbids the capture of wild birds with lines and baited hooks.

Wildes. In the statute 14 Car. 2, c. 6, s. 17, "wildes" is a misprint for "wealds."

Wild's Case, Rule in. *Wild's Case* is reported 6 *Co. Rep.* 17, and the rule established by it is as follows: Where there is a devise to a person and his children, then, if there were children actually born at the time when the will was made, the parent and the children take a fee simple concurrently as joint tenants, unless there be words in the context to show that the children are not intended to take immediately; if there be such words, then, according to such intention as is disclosed, the parent either takes an estate tail or else the parent takes for life and the children take in succession to him as purchasers: if there were no children born at the date of the will, then the parent takes an estate tail unless the context shows that he is to take for life and that unborn children are to take in succession to him as purchasers.

Wilful means intentional or deliberate. Thus if a person accidentally strikes another, this is a battery giving rise to a right of action for damages, while, if he does it intentionally it is a wilful battery, for which the party injured may have an action of damages or a criminal prosecution. (See BATTERY.) Similarly a "wilful default" is an act of omission done with intention. Mortgagees and other persons holding securities are liable for losses caused by their wilful default; hence if a mort-

gagee of land in possession does not avail himself of an opportunity of letting the land beneficially, he is bound to give credit for what he has thus lost by his wilful default. (See MORTGAGEE IN POSSESSION.) Wilful default is a species of contributory negligence. See NEGLIGENCE.

Will. A will is a disposition or declaration by which the person making it (who is called the testator) provides for the distribution or administration of property after his death. It does not take effect until the testator's death, and is always revocable by him.

Formerly "will" signified a testamentary disposition of land, as opposed to a testament (q.v.), but this distinction is now obsolete. In the strict sense of the word, a will includes all testamentary dispositions by the testator in force at the time of his death; but in practice "will" signifies a testamentary document which is in form complete in itself, while additional or supplementary dispositions are called "codicils." See CODICIL; TESTAMENTARY.

A will of fixed or immoveable property (including leaseholds) is generally governed by the *lex loci rei sitæ*. (See LEX LOCI.) Thus, a will made in Holland in the Dutch language must, in order to operate on lands in England, be executed and attested according to English law, and must contain expressions which, being translated into English, would comprise and pass the lands in question. In regard to personal, or rather moveable property, the will is governed by the law of the place where the person was domiciled at the time of his death. But as regards formalities of execution, this rule is now subject to some exceptions, as to which see DOMICILE.

Infants and lunatics are wholly incapable of making wills while their disability lasts. A married woman (married before 1st January, 1883) may make a will in respect of property which is her separate estate, or, with the assent of her husband, in respect of personal estate other than separate estate. (See SEPARATE ESTATE; TESTABLE.) A woman married after 31st December, 1882, has complete testamentary power with regard to all her property of every kind. The will of a woman dying a widow after 5th December, 1893, even if it is executed during coverture, speaks as from the date of her death (Married Women's Property Act, 1893, s. 3). All other persons have complete testamentary capacity. A person may also have a power of appointment by will over property not belonging to him (see POWER; TESTABLE): the rule of the High Court (in its probate jurisdiction) as to such wills is that it will grant probate of any instrument of a testamentary character if duly executed, leaving the question whether it is a valid exercise of the power to be decided by the proper tribunal, so that a testamentary document purporting to be made in execution of a power may be proved as a will and yet be invalid, because it has not complied with the power. By the Wills Act, 1837, s. 10, every will executed in accordance with its provisions (*infra*) is declared to be, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, although the power may have expressly required that a will made in exercise of it should be executed with some additional or other form of execution or solemnity. See APPOINTMENT; EXECUTE.

A person having testamentary capacity may dispose by will of all real and personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so disposed of, would devolve upon his heir, executor or administrator, including estates *pur auter vie*, and all contingent, executory and future interests in property, and all rights of entry (Wills Act, 1837, s. 3). See OCCUPANCY; RIGHT OF ENTRY.

A will may be joint, or joint and mutual, and the wills of two or more persons may be mutual but not joint. A will is joint when two persons by the one instrument dispose of the things over which they respectively have testamentary power; a will is joint and mutual when made jointly by two persons who each takes benefits under the will of the other; and wills are mutual but not joint when each makes a separate will under which the other takes benefits. A joint will is the will of each testator, and will be admitted to probate as soon as he dies. Each maker of a mere joint will can at any time before his death revoke it in so far as it relates to what he personally can dispose of; a joint and mutual will or mutual wills can be revoked by either party during the lifetime of the other, but a joint and mutual will, or a mutual will, cannot be revoked by a survivor who takes benefits under the will of the testator who first died, and the survivor is in equity a trustee for the personal representatives of the deceased testator as regards whatever the deceased was to have taken under the will as it stood when the first of the testators died.

As to devises in mortmain, see that title.

As to the descent of trust and mortgage

estates, notwithstanding a testamentary disposition, see DESCENT.

No particular form of words is required to make a valid will so long as the testator's intention can be ascertained; otherwise its provisions will fail from uncertainty (q.v.).

A will must in ordinary cases be in writing, and signed at the foot or end by the testator, or by some one in his presence and by his direction, and the signature must be made or acknowledged by the testator in the presense of two or more witnesses, who must be present together at the same time, and must attest and subscribe the will in the presence of the testator (Wills Act, 1837, s. 9; Wills Act Amendment Act, 1882). See ATTESTATION CLAUSE.

A devise or bequest to an attesting witness, or to his or her wife or husband, does not affect the validity of the will, but the gift is void (Wills Act, 1837, s. 15) unless the will be one made under s. 11 of the Wills Act, 1837, and requiring no attestation, that is to say, a will made by a soldier in actual military service or by a mariner or seaman at sea (*ib.* s. 11), or by a member of His Majesty's naval or marine forces in such circumstances that if he were a soldier he would be in actual military service (Wills (Soldiers and Sailors) Act, 1918, s. 1). Such a soldier's or sailor's will could dispose only of personalty under s. 11 of the Act of 1837, but now, under the Act of 1918, s. 3 (1), it can dispose of realty as well as of personalty. Such a will may be in the form of a letter or of anything else, provided it shows the intention of the testator.

A nuncupative will is when the testator without any writing declares his will before a sufficient number of witnesses. Before the Statute of Frauds, such wills were as valid for disposing of personalty as written wills; but by that statute they were laid under several restrictions, except (s. 22) when made by soldiers in actual service, or seamen or mariners at sea. And by the Wills Act, 1837, nuncupative wills are altogether rendered invalid, except (s. 11) those made by soldiers or seamen in accordance with the old law. The Wills (Soldiers and Sailors) Act, 1918, s. 1 (*supra*), applies to nuncupative wills as well as to other wills under s. 11 of the Wills Act, 1837; and s. 3 (1) of the Act of 1918, makes realty devisable by any nuncupative will valid as regards personalty. As to the Acts restricting the right of the non-commissioned ranks of the Navy and Marines to make nuncupative or other informal wills, see NAVAL TESTAMENT.

As to the revocation and revival of wills, see those titles.

Every will is construed, with reference to the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear. As to the effect of this rule, see DEVISE; LAPSE; LEGACY; RESIDUE: for a *quasi*-exception to this rule, see WILD'S CASE.

Wills are not required to be in any particular form, but a well-drawn will usually contains the following clauses (or as many of them as may be required) in the following order:—(i) commencement ("This is the last will of me, A B, etc."): (ii) revocation of former wills: (iii) specific legacies: (iv) general legacies: (v) annuities: (vi) specific devises: (vii) residuary gift: (viii) clauses relating to property settled or given in trust (if any): (ix) devise and bequest of trust and mortgage estates: (x) appointment of executors and guardians: (xi) testimonium. (See the various titles; and as to settlements made by will, see SETTLEMENT; TRUST.).

As soon as possible after the testator's death, it is the duty of the executor to prove his will, either in common or in solemn form. (See PROBATE.) If there is no executor, letters of administration with the will annexed are granted. (See LETTERS OF ADMINISTRATION.) Before the probate is obtained, an executor may act as effectually in almost everything as if probate had been granted, and when granted it has relation back to the death of the testator. In the case of an administrator, on the other hand, acts done before the grant of administration are, as a general rule, not binding. Both rules are subject to exceptions.

See ESTABLISHMENT, ETC.; ALIENATION.

William I., Laws of. William made but few changes in the national laws. He renewed the law of Edward the Confessor with certain additions made by himself. Normans and English were in theory equal before the law, but the distinction of personal law was, for some purposes, allowed. The Normans were accustomed to the wager of battle (q.v.), the English to the ordeal and compurgation (q.v.). William allowed the man of each race to be tried by the customs of his own country. He abolished the punishment of death and substituted for it that of mutilation. The forest laws which he introduced were marked by extraordinary harshness. He separated the ecclesiastical from the civil jurisdiction of the Courts of law. See Taswell Langmead, *Constitutional History*.

Win. In a covenant in a mining lease, to "win" a mineral means to put the ore in such a state that working can go on in the ordinary way.

It is doubtful whether it is necessary, in order to constitute the offence under s. 17 of the Gaming Act, 1845, of "winning" money by cheating at play, that the person who has been cheated should actually pay over what he has lost.

Winchester Measure. Measure according to the standards kept at Winchester until the enactment in 1835 of the statute 5 & 6 Will. 4, c. 63.

Winchester, Statute of. This is the statute 13 Edw. 1, st. 1. It dealt with the preservation of the peace. See ARTICULI INQUISITIONES SUPER STATUTUM WINTONIÆ.

Windfalls. In the law, this term is understood as meaning only trees blown down by the wind, though ordinarily it includes fruit, etc. Windfalls of timber (q.v.) belong, as between landlord and tenant, to the landlord if they are sound and to the tenant if they are dead, and, in the case of settled land, windfalls of dead timber go to the tenant for life, while the proceeds of the sale of sound windfalls are treated as capital moneys.

Winding-up, as applied to a partnership or company, is the operation of stopping the business, realising the assets and discharging the liabilities of the concern, settling any questions of account or contribution between the members, and dividing the surplus assets (if any) among the members. The term "winding-up" was also sometimes applied to the estates of deceased persons, but "administration" (q.v.) is now the usual expression.

(1) The winding-up of a partnership is either—(1) voluntary (*i.e.*, by agreement between the partners), or (2) by order of a Court made in an action for the dissolution of the partnership. (See DISSOLUTION.) A partnership consisting of more than seven members may be wound up by an order obtained on a petition under the Companies (Consolidation) Act, 1908, ss. 267, 268, in which case the winding-up is almost the same as if the partnership were a company.

(2) The winding-up of companies before 1862 was effected under the Winding-up Acts of 1848-49, and the Joint Stock Companies Acts 1856-58, which provided a machinery partly in Chancery, and partly in Bankruptcy; after 1862 all companies, except railway companies incorporated by Act of Parliament, were wound up under the provisions of the Companies Act, 1862, in one of the three manners in which companies are now wound up under the Companies (Consolidation) Act, 1908. These three manners were, and are:—compulsory winding-up by the Court; voluntary winding-up without the intervention of the Court; and voluntary winding-up under the supervision of the Court. A compulsory winding-up takes place when the Court having jurisdiction in the matter makes an order for winding-up on a petition presented by the company itself, or by a creditor or a contributory. The commonest case of compulsory winding-up occurs where a company cannot pay its debts (Companies (Consolidation) Act, 1908, s. 129). Companies not registered under the Act can only be wound up compulsorily (*ib.*, s. 268). All the proceedings in a compulsory winding-up are taken under the direction of the Court. A voluntary winding-up takes place when the period fixed for the duration of the company by its articles has expired or when the company passes a resolution to wind-up (*ib.*, s. 182). Such a resolution must, in certain cases, be either a special or extraordinary resolution. (See RESOLUTION.) A voluntary winding-up is conducted without the intervention of any Court. A winding-up may be voluntary, but subject to the supervision of the Court: that is, the winding-up is determined on by resolution of the company, but an order is subsequently made by the Court that it shall be carried out subject to such restrictions as the Court may impose, and with such liberty for persons interested to apply to the Court, and generally in such manner as the Court thinks just (*ib.*, s. 199).

By the doctrine of relation (see RELATE) a compulsory winding-up is deemed to commence at the time of the presentation of the petition. Voluntary winding-up (whether under supervision or not) commences at the time of the passing of the resolution to wind up (s. 183). All dispositions of the property of the company, and every transfer of shares or alteration in the status of the members of the company, made after the commencement of the winding-up, are void, except in certain cases.

The principal effects of a winding-up are: 1st. Nothing can be done after its commencement, except in order to realise the company's assets, enforce contributions from its members if necessary, and distribute them among its creditors and then, if there is any surplus, among the members. 2nd. Liquidators must be appointed to carry out these objects. 3rd. Legal proceedings against the company can be stayed or restrained once the

winding-up petition has been presented (s. 140). Where a company is being wound up compulsorily or subject to supervision in the High Court, the judge before whom it is pending may order any actions by or against the company pending in any other division or in any other Court to be transferred to him (Companies (Winding-up) Rules, 1909, rr. 42, 43), and judges of inferior Courts have like powers (*ib.* r. 44). See CLAIM; CONTRIBUTORY; DISSOLUTION; LIQUIDATOR; and compare ADMINISTRATION; BANKRUPTCY.

Window. See LIGHT.

Window Cleaning. The Public Health Act, 1875, s. 171, incorporates s. 28 of the Town Police Clauses Act, 1847, which provides a penalty for anyone permitting a window cleaner to stand on the outside of any window other than one in the basement of a house.

Window Tax. A tax first imposed by the statute 7 & 8 Will. 3, c. 18. It was levied upon the occupants of houses with more than a certain number of windows and increased as the number of windows in the house rose. It was continued, increased and diminished under a number of statutes, the last of which was the statute 48 Geo. 3, c. 55. That Act was repealed by the House Duty Act, 1851, which substituted Inhabited House Duty (q.v.) for the window tax.

Windsor. See HERALDS.

Windsor Forest. A royal forest covering an area of about 60,000 acres in the vicinity of Windsor Castle. It was disafforested by the statute 52 Geo. 3, c. 71.

Windsor, Knights of. Retired military officers who have apartments and pensions at Windsor Castle. Some of them are in fact knights, but not in their capacity of Knights of Windsor, who, as such, are not knighted. From 1797 to 1892 there were also Naval Knights of Windsor.

Wine. Adulteration of wine is now dealt with under the Sale of Food and Drugs Acts. (See ADULTERATION.) Formerly it was punishable under special Acts such as the statute 12 Car. 2, c. 25, repealed in 1863. The prices of various wines were anciently regulated by various Acts which, unfortunately, have all been repealed. Thus, for instance, the statutes 28 Hen. 8, c. 14, s. 2, and 12 Car. 2, c. 25, s. 13, empowered the Lord Chancellor, etc., to fix prices, and the statute 12 Car. 2, c. 25, s. 12, enacted that Spanish wines were not to be sold at more than eighteenpence a quart, nor French wine at more than eightpence per quart, unless a higher price had been fixed.

Winter Heyning. A season, extending from 11th November to 23rd May during which, in some of the royal forests, the commoners were deprived of rights of pasture in order that there might be sufficient feeding for the deer.

Winton Domesday (Liber Wintoniæ). This is an account or survey of the City of Winchester made by order of Henry I. It is, or was, in possession of the Society of Antiquaries.

Wireless Telegraphy. Under the Merchant Shipping (Convention) Act, 1914, all British ships ordinarily carrying more than fifty persons in all must be provided with wireless apparatus of the prescribed efficiency (s. 15), unless they be ships not going more than 150 miles from land or sailing ships incapable of working the apparatus, both of which classes of ships may be exempted under rules made by the Board of Trade (s. 16). Under the Merchant Shipping (Wireless Telegraphy) Act, 1919, every British steamer carrying more than 12 passengers, and every British ship of 1,600 tons gross, must have wireless installed unless the Board of Trade gives her an exemption on the ground that such installation is unnecessary or unreasonable (ss. 1 (1), 3 (2)). See TELEGRAPHS AND TELEPHONES.

Wisby (or Wisbuy, or Visby), Laws of. These are the Water-Recht, or sea-law, of the Hanse town of Wisby in the Island of Gotland. They contain the maritime mercantile code which, as a Copenhagen copy (dating from the fifteenth century) puts it, the skippers and merchants had resolved unto themselves as sea-law. These Laws of Wisby appear to have been based partly upon a code drawn up at Lubeck, of which a copy dated 1240 still exists, partly upon the Laws of Oleron (q.v.), and partly upon the maritime ordinances of Amsterdam, the latter being the mediæval sea-code of those trading out of Amsterdam; and they formed the mercantile sea law of the Baltic. They, like the Laws of Oleron, the *Consolato del Mare* (q.v.) and other similar compilations, were cited as authorities by the English Courts so late as 1759. These compilations, like the rest of the law merchant (q.v.), consisted of working rules drawn up by practical men of business, and the Courts wisely accepted these rules as law.

The Laws of Wisby are known in England chiefly through an abbreviated and somewhat inaccurate French version contained in Cleirac's *Us et Coustumes de la Mer*, published in 1641. A translation of portion of the Laws of Wisby and of portion of the Laws of Oleron is given

in Malynes *Lex Mercatoria*, published in 1686.

See HANSEATIC LAWS.

Wit; Wite; Wyte. In Anglo-Saxon times this meant a penalty for murder or other serious offence against the person: see, for instance, BLODWYTE.

Witchcraft. Much the same as conjuration (q.v.).

Witenagemot. The mote or meeting of the wise men. In Anglo-Saxon times it was the great council, consisting of bishops, abbots, ealdermen and other notables, which was associated with the king in the government of the country. See GREAT COUNCIL.

Withdrawal. Where the plaintiff in an action does not wish to proceed with a portion of his claim, he may withdraw that part of his statement of claim either (i) by giving notice to the defendant, if no step subsequent to the delivery of the statement of defence has been taken (Ord. 26, r. 1); or (ii) at any other time by leave of the Court or a judge (*ib.*). A defendant may also, by similar leave, withdraw the whole or any part of his defence or counterclaim (*ib.*). When a cause has been entered for trial, it may be withdrawn by consent (Ord. 26, r. 2). See DISCONTINUANCE.

Withdrawal of a Juror. At the trial of an action, when neither party feels sufficient confidence to render him anxious to persevere till verdict, or when the judge recommends that the action should not proceed further, the parties may by consent, for it cannot be done otherwise, withdraw a juror; and as that leaves the jury incomplete, there can be no verdict, and the trial comes to an end. The withdrawal of a juror in this way always puts an end to the cause unless the withdrawal be upon terms which are not carried out; and if the action be afterwards proceeded with, an application may be made to the Court or a judge to stay the proceedings. Compare DISCHARGE.

Withernam. A taking again. See AVERIIS CAPTIS IN WITHERNAM; CAPIAS.

Without Day. Formerly, when a defendant in an action succeeded on a plea, the judgment in certain cases was that he should "go without day," or "go quit without day," that is, go free from the action without a continuance to any certain day; in other words, be discharged of further attendance. In some cases (*e.g.*, in case of nonsuit) this disposed of the action altogether, while in other cases it only suspended the action until the plaintiff remedied some defect in his title. See SINE DIE.

Without Prejudice. See PREJUDICE.

Without Recourse to Me. An agent who expresses his endorsement of a bill of exchange to be "without recourse to me" protects himself from liability.

"Without Reserve." See AUCTION.

Without This That. The words "without this that" (or the earlier forms "*absque hoc*" or "*sans ceo que*") were the words used at the commencement of special traverses (q.v.).

Witness.—I. In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, "witness" has acquired the sense of a person who is present at and observes a transaction.

Hence, when a deed or other instrument is executed in the presence of a person, and he records the fact by signing his name on it, he is said to witness it, or to be an attesting witness. The rule is that if there be an attesting witness within the jurisdiction, the document cannot be put in evidence unless he has been called to prove it: but to this rule there are exceptions. As to gifts to attesting witnesses in the case of wills, see WILL.

II. In procedure, a witness is a person who makes a *viva voce* statement to a judicial tribunal on a question of fact. (See EVIDENCE; EXAMINATION; FACT.) Witnesses require to be sworn before their evidence is given (see OATH), unless they have conscientious objections to taking an oath, or have no religious belief, in which case they make a solemn affirmation. See AFFIRM.

The general rule is that all persons are competent to give evidence, provided they have sufficient mental understanding. See COMPETENCY; CREDIBILITY; VOIRE DIRE.

Every witness has a right to refuse to answer certain questions, such as a question the answer to which would have a tendency to expose the witness to criminal proceedings, or to a forfeiture or penalty. Liability to civil proceedings is not a ground of privilege. See further on this subject, ACCUSARE NEMO, ETC.; see also CONFIDENTIAL COMMUNICATIONS; PRIVILEGE.

As a general rule, every witness ought, in the first instance at least, to be presumed to be favourably disposed towards the party by whom he is called, and his examination should be conducted on that theory: but see HOSTILE WITNESS. A zealous witness is one who endeavours to shape his testimony so as to make it as favourable as possible for one of the parties. One of the most dangerous kinds of

witness for the party calling him is a witness who " proves too much."

Witnessing Part, in a deed or other formal instrument, is that part which comes after the recitals, or where there are no recitals, after the parties. It usually commences with a reference to the agreement or intention to be effectuated, then states or refers to the consideration, and concludes with the operative words and parcels, if any (q.v.). Where a deed effectuates two distinct objects there are two witnessing parts.

The witnessing part is so called because in indentures it commences with the words " This Indenture Witnesseth," meaning that the instrument is intended as a record of the transaction.

Wolfeshead; Wolferhefod. In Anglo-Saxon times this was what afterwards was called *caput lupinum* (q.v.).

Women. The Sex Disqualification (Removal) Act, 1919, s. 1, provides that " a person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society . . . and a person shall not be exempted by sex or marriage from the liability to serve as a juror." This enactment, it will be noted, does not apply to the military or naval forces of the Crown.

Women had been given votes at parliamentary elections in 1918 (see ELECTORAL FRANCHISE), and later in the same year the incapacity of a woman to be a member of Parliament was removed by the Parliament (Disqualification of Women) Act, 1918.

See MARRIED WOMEN'S PROPERTY ACTS.

Women and Children, Offences as to. As to sexual offences, see ABDUCTION; ABORTION; BROTHEL; EXPOSURE; CARNAL KNOWLEDGE; INDECENT ASSAULT; INDECENCY; PROCURATION; PROSTITUTE; RAPE. As to other offences and various enactments, see ASSAULT; ABDUCTION; CRUELTY TO CHILDREN; BEGGAR; MINE.

Wood-coln. A payment formerly made by the tenants on certain manors for the right of gathering dead wood.

Wood-geld. This meant either money paid for wood cut in a forest, or money paid in order to secure the right of cutting wood therein.

Wood-mote. See FORTY-DAYS' COURT.

Wood Plea Court. A Court anciently held in the Forest of Clun, in Shropshire, to settle all questions as to wood and agistments.

Woods and Forests. See COMMISSIONERS OF WOODS, ETC.

Woodward. An official who looked after the vert (q.v.), venison (q.v.) and wood in a forest. He was permitted to carry the weapon known as a forest bill, but not a bow and arrows.

Woolsack. The seat on which the Lord Chancellor sits in his capacity of Speaker of the House of Lords. It is not technically part of the House: and persons—such as members of Parliament—who are not peers occasionally sit upon part of it. If, as is theoretically possible, the Lord Chancellor were not a peer, he could not go beyond the Woolsack and the small space surrounding it. When the Lord Chancellor votes as a peer, he votes from the Woolsack; but if he desires to speak as a peer, he leaves the Woolsack and goes to his place in the House.

See the statute 31 Hen. 8, c. 10, s. 8.

Words of Limitation; Words of Procreation; Words of Purchase. In a conveyance or will, words which have the effect of marking the duration of an estate are termed words of limitation. (See LIMITATION.) Thus, in a grant to A and his heirs, the words " and his heirs " are words of limitation, because they show that A is to take an estate in fee simple, and do not give his heirs anything. In a deed executed after the 31st December, 1881, it is sufficient, in the limitation of an estate in fee simple, to use the words " in fee simple," without the word " heirs " (Conveyancing Act, 1881, s. 51). To create an estate tail by deed, it is necessary that certain words, known as words of procreation, should be used in order to confine the estate to the descendants of the first grantee, as in the usual form of limitation—" to A and the heirs of his body." Hence, a limitation to A and his heirs male would not create an estate tail, for want of words of procreation. In a deed executed after the 31st December, 1881, it is sufficient to use the words " in tail " without the words " heirs of the body " (*ib.*). Only those words of procreation above mentioned are effectual in the case of a deed. Thus a gift to A and his children, or his issue or his offspring, will not, if used in a deed, create more than a life estate; but if used in a will they create an estate tail.

Words of purchase are words which denote the person who is to take the estate. Thus, if I grant land to A for twenty-one years, and after the determination of that term to A's heirs, the word " heirs " does not denote the duration of A's estate, but the person who is

to take the remainder on the expiration of the term, and is therefore called a word of purchase. Hence, "words of purchase" and "words of limitation" are opposed to one another. (See SHELLEY'S CASE; PURCHASE.) But there are cases in which words operate partly as words of purchase, and partly as words of limitation; thus, if an estate is limited to the heirs of the body of A, A being dead, these words are words of purchase to the extent that they give the estate to the person who fills the character of heir of the body of A (*e.g.*, his eldest son B) by purchase and not by descent; but as they also have the effect of giving B an estate tail, they are to this extent words of limitation.

Workhouse is a building for the accommodation of paupers in a parish or union. See POOR LAW; VESTRY.

Working Classes. The Settled Land Act, 1890, s. 18, provides that, as regards buildings of a rateable value not exceeding £100, the expression "working classes" in s. 11 of the Housing of the Working Classes Act, 1885 (which allowed settled land to be let at a rate lower than the market rate for the erection thereon of working-class dwellings) should include "all classes of persons who earn their livelihood by wages or salaries." Section 11 of the Act of 1885 has been repealed, but is repeated *verbatim* and replaced by s. 74 of the Housing of the Working Classes Act, 1890. Compare LABOURING CLASSES.

Working Days. See RUNNING DAYS.

Working-men's Clubs are societies established and registered under the Friendly Societies Act, 1896, s. 8 (4), for purposes of social intercourse, mutual helpfulness, moral improvement and rational recreation, or for any one or more of those purposes. According to a report of the Commission on Friendly Societies made over forty years ago, the members of these clubs "meet and read newspapers, and have lectures and tea and coffee, and sometimes beer." See FRIENDLY SOCIETIES.

Workmen. See COMMON EMPLOYMENT; MASTER AND SERVANT; TRADE UNIONS; TRUCK ACT; UNEMPLOYED WORKMEN; WORKMEN'S COMPENSATION.

Workmen's Compensation. The Employers' Liability Act, 1880 (see COMMON EMPLOYMENT), made an employer liable for accidental injury to one workman through the negligence of a fellow-workman. The Workmen's Compensation Act, 1906, *s.* 1, went much further, and provided that "If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall . . . be liable to pay compensation . . ." Section 13 defines "workman" as anyone under a contract of service who is not a person employed otherwise than by way of manual labour at a remuneration exceeding £250 a year, and who is not a member of a police force, a person in the military or naval service of the Crown, an outworker, a member of the employer's family living with him, or a person employed casually otherwise than in the course of the employer's trade or business.

The Act (as amended in small points by the Workmen's Compensation (Illegal Employment) Act, 1918, and the Workmen's Compensation (Silicosis) Act, 1918) forms a complete code of great length and complexity. See Willis's *Workmen's Compensation*, of which a new edition appears in or about every year. See GLANDERS.

Workshop. Defined for the purposes of the Factory and Workshop Act, 1901, in s. 149 (1) of that Act. See FACTORIES.

Wort; Worth. A farm.

Worthing. A quantity of land in the manor of Kingsland, in Herefordshire, the tenants of which were called worthies.

Wounding and Maiming, as civil offences, are merely aggravated forms of battery (q.v., and see MAYHEM).

As to felonious wounding and maiming, see MALICIOUS INJURIES TO THE PERSON; MAYHEM.

Wreck. By the common law, if a ship was lost at sea, and the cargo or a portion of it came to land, the goods saved belonged to the Crown under the name of wreck. (See PREROGATIVE.) This privilege was frequently granted to lords of manors. See FRANCHISE; MANOR.

The strictness of the prerogative right to wreck was relaxed by early charters and by the statutes 3 Edw. 1, c. 4 and 27 Edw. 3, st. 2, under which the owners of shipwrecked goods were allowed to reclaim them within a year and a day, if they could identify them.

At the present day, "wreck" includes not only wreck at common law, but also jetsam, flotsam, ligan and derelict (q.v.); and statutory provision has been made for the appointment of officers called Receivers of Wreck (q.v.), whose duty it is to preserve wreck until it is claimed by the owner, or, if he does not claim it within a year, then to sell it and pay the proceeds into the Exchequer (Merchant Shipping Act, 1894, s. 521). Provision has also been made for holding investigations as to wrecks and casualties (see WRECK COMMIS-

SIONERS), under the general superintendence of the Board of Trade.

Malicious injuries to wreck are punishable under the Malicious Damage Act, 1861, s. 49: the Larceny Act, 1916, s. 15, deals with larceny of wreck: other offences in connection with wreck are dealt with in ss. 17, 37 of the Offences Against the Person Act, 1861, and others again in ss. 519, 535-7, of the Merchant Shipping Act, 1894.

As to the removal of wrecks which obstruct navigation, see ss. 530-4 of the same Act.

Wreck Commissioners are persons appointed by the Lord Chancellor under the Merchant Shipping Act, 1894, s. 477, to hold investigations (s. 466 (2)) at the request of the Board of Trade into shipping casualties, which are defined in s. 464. Similar investigations are in some cases made by stipendiary magistrates (s. 476). Preliminary investigations are also held by various officers of the Coastguard and Customs Services, etc. (s. 465). See COURTS OF SURVEY.

Writ. A writ is a document in the King's name and under the seal of the Crown, a Court or an officer of the Crown, commanding the person to whom it is addressed to do or forbear from doing some act. As to the issue and service of writs, see ISSUE; SERVICE.

Writs are of two principal kinds—prerogative and of right.

I. Prerogative writs are so called because they are issued by virtue of the Crown's prerogative, and not as part of the public administration of justice; writs belonging to the latter class are called writs of right, because the Crown is bound by Magna Charta to issue them, while prerogative writs are granted at the discretion of the Court, and only on a *primâ facie* case being shown. The writs of *mandamus, procedendo, prohibition, quo warranto, habeas corpus* and *certiorari*, are prerogative writs. (See the titles.) There are also statutory writs of *mandamus* (q.v.), which are grantable as a matter of right.

II. Writs of right are of two kinds—original and judicial.

An original writ was anciently the mode of commencing every action at common law. It issued out of the common law side of the Chancery (see OFFICINA JUSTITIÆ) and was under the Great Seal. To avoid the expense of original writs, other modes of beginning actions were devised with the connivance of the Courts; but they were all abolished, and the modern writ of summons introduced, by the statute 2 & 3 Will. 4, c. 39. Original writs, however, continued some time longer to be used as modes of appealing from one Court to another (as in the case of writs of error, writs of false judgments, etc.), and the writ of error used in criminal proceedings, which (see ERROR) was abolished in 1907. See CURSITOR.

A judicial writ seems to be any writ which is issued by a Court under its own seal, as opposed to an original writ. Judicial writs may be be divided into—(1) writs originating actions and other proceedings, of which the ordinary writ of summons (q.v.) is the commonest instance; (2) interlocutory writs, issued during the course of an action before final judgment, such as writs of inquiry, *mandamus* and recaption, and writs for enforcing obedience to interlocutory orders by attachment, sequestration, etc.; (3) writs of execution. Writs of execution are of two kinds: some are issued in the first instance (*e.g.*, writs of *fieri facias*, elegit, sequestration, delivery, possession, *levari facias*, etc, etc.): while others are only issued in aid of other writs, that is, when a writ of execution has been issued without producing the desired effect: such are writs of *venditioni exponas, distringas, fi. fa. de bonis ecclesiasticis, sequestrari facias*, and the writ of assistance. See the various titles.

In the old books, "writ" is used as equivalent to "action": hence writs are sometimes divided into real, personal and mixed. See ACTIONS.

As to *alias* and *pluries* writs, see those titles.

See also RETURN; TESTE; DETAINER; EXECUTION; MANDATORY; TESTATUM; CURSITORS; CLOSE ROLLS.

As to the various writs, such as the writs of assistance, attachment, delivery, dower, entry, error, false judgment, *habere facias possessionem*, see the various titles denoting the object of each respective writ.

For forms of writs now in use see App. H. to the Rules of the Supreme Court.

Writing—Written.—I. In the most general sense of the word, "writing" denotes a document, whether manuscript or printed, as opposed to mere spoken words. Writing is essential to the validity of certain contracts and other transactions (as to which see BILL OF EXCHANGE; CONTRACT; STATUTE OF FRAUDS; TENTERDEN'S ACT; WILL), while some legal transactions require the additional formality of a deed (q.v.). As to written and spoken defamation, see LIBEL; SLANDER; SEDITION. As to written evidence, see EVIDENCE.

II. Writing is sometimes opposed to printing: thus, in the practice of the High Court, pleadings not exceeding ten folios in length may

be written or printed, while those exceeding that length must be printed, unless otherwise ordered under the Poor Persons Rules (Ord. 19, r. 9).

III. In the old books, "writing" sometimes signifies a "writing sealed," that is, a deed, as opposed to "parol" (q.v.).

Writ of Right.—I. In the general sense of the term, a writ of right is one which is grantable as a matter of right, as opposed to a prerogative writ, which is issued only as a matter of grace or discretion. See WRIT.

II. In the old real property law, a writ of right was a real action which lay to recover lands in fee simple, unjustly withheld from the owner. It might be brought in any case of disseisin, but was in practice only used where the disseisee had lost his right of entry or right to the possession, as in other cases a possessory action (such as a writ of entry) was more convenient. It was called a writ of right, because it was brought to assert the right of property remaining in the owner, which, as already mentioned, was usually a mere right (see RIGHT). There were also writs in the nature of writs of right, such as the writ of right of dower. See WRIT OF DOWER.

See RECTO; RIGHT CLOSE; RIGHT PATENT.

Writ of Summons. In actions in the High Court, the writ of summons is a process issued at the instance of the plaintiff for the purpose of giving the defendant notice of the claim made against him and of compelling him to appear and answer it if he does not admit it. It is the first step in the action (Ord. 1, r. 1; Ord. 2, r. 2). It is issued in probate actions from the Central Office, and in other actions either from that office or from a district registry (Ord. 5, rr. 1, 2). See ACTIONS AND MATTERS.

The writ consists of the body, the memoranda and the indorsements. The body contains the "title" (that is, the reference to the record, the name of the Court, division (and judge if necessary) and the names of the parties, see TITLE), the mandatory part (by which the defendant is ordered to enter an appearance), and the teste (q.v.). The memoranda specify the time within which the writ must be served and the place where the defendant may enter an appearance. The indorsements are of four kinds. First, in the case of a writ not specially indorsed, the indorsement of claim, being a brief statement of the nature of the plaintiff's claim (Ord. 2, r. 1; Ord. 3, r. 2). Secondly, in the case of a specially indorsed writ, the special indorsement, which may be employed where the plaintiff's claim consists of a debt or liquidated (q.v.) demand (Ord. 3, r. 6). This special indorsement is termed the statement of claim in Ord. 3, r. 6, and it is expressly provided in Ord. 20, r. 1 (*a*) that it shall be deemed the statement of claim. It must show the plaintiff's case as clearly as a separate statement of claim (q.v.) should do. Thus, in an action for money lent, the special indorsement would give the amount of the loan, the arrears of interest and any repayments made on account, and would claim payment of the balance. The principal object of the special indorsement is to enable the plaintiff to obtain "judgment under Order XIV." (see JUDGMENT). Thirdly, the indorsement of address, giving the name and address of the plaintiff and his solicitor, with an address for service if necessary (see ADDRESS FOR SERVICE). Fourthly, the endorsment of service made by the person who serves the writ.

In addition to these indorsements there are others used in special cases: such are the indorsement that the plaintiff sues or that the defendant is sued in a representative capacity (Ord 3, r. 4), such as executor; that the plaintiff claims to have an account taken in the first instance (Ord. 3, r. 18) that is to say, immediately after appearance, etc.; and in probate actions, the indorsement of the character in which the plaintiff claims (Ord. 3, r. 5), *e.g.*, as next of kin, creditor, executor, etc.

In Admiralty actions *in rem* the writ of summons is in a special form (Ord. 2, r. 7); it is addressed to the owners of the ship or other property, and commands them to enter an appearance; and at any time after it's issue a warrant may be issued authorising the arrest of the ship, etc. (Ord. 5, r. 16). The service (q.v.) of the writ and the execution of the warrant are effected simultaneously.

A writ remains in force for twelve months from its issue, but if service has not been effected within that time it may (if a judge so orders) be renewed for six months, by being sealed by the proper officer (Ord. 8, r. 1).

If there are several defendants to be served, or the whereabouts of a defendant is doubtful, or some similar reason exists, one or more concurrent writs (that is, writs to the same effect as the original writ and remaining in force for the same time) may be issued, so as to facilitate service: see Ord. 6.

Before the Judicature Acts the Court of Probate had power to cause questions of fact arising in suits or proceedings to be tried by a jury by means of an issue directed to one of the superior Courts of law: the issues were

contained in a document called a writ of summons.

Writs Close. See CLOSE ROLLS.

Wrong is that which takes place when a right is violated or infringed.

Wrongs are generally divided into private and public. A private wrong is one which confers a remedy or right of redress on an individual: such are breaches of contract, torts, etc. A public wrong is one which renders the wrongdoer responsible to the community: such are crimes (q.v.) and other offences (q.v.), and generally all infringements of the rules of public law. See LAW.

As to estates or titles by wrong, see TITLE.

Y

Yachts are vessels navigated solely for purposes of pleasure. The provisions of the Merchant Shipping Act, 1894, with regard to the engagement and qualification of the crew do not apply to sea-going yachts (s. 262). Yachts not exceeding fifteen tons do not require to be registered (Merchant Shipping Act, 1894, s. 3 (1)) unless they be used for sea-fishing and have not been exempted from registration by Order in Council (ss. 370, 373). Yachts belonging to the principal yacht clubs are exempted from the obligation of having their names and other particulars painted on them (Board of Trade Circular of December, 1909), and from compulsory pilotage (Pilotage Act, 1913 (s. 11 (3)). The limitation of liability provided by s. 503 of the Merchant Shipping Act, 1894, does not apply to a yacht of which the owner is in command, or which is racing under rules which make the owner impliedly contract to pay full damages.

Yard. The standard measure of length. It is thirty-six inches, and its precise length is ascertained in accordance with s. 10 of the Weights and Measures Act, 1878.

As to the yard of a house, see CURTILAGE.

Yardland, or *virgata terræ*, is a quantity of land, said by some to be twenty acres, but by Coke to be of uncertain extent. See PLOUGHLAND.

Year. A year consists of twelve calendar months; that is, 365 days in ordinary years, and 366 days in leap-year. By the statute 21 Hen. 3 (40 Hen. 3 in the *Statutes of the Realm*) the increasing day in the leap-year, as well as the preceding day, were accounted for one day only. The 1st January is the first day of the year by the Calendar (New Style) Act, 1750; before that enactment the 25th March was the first day of the year.

See TIME. As to leases for years, see LEASE; TENANT FOR YEARS; TERM.

Year and Day. The owners of estrays (q.v.) must claim them within a year and a day, otherwise they belong to the Crown or a grantee from the Crown. As to wreck see that title; see also CONTINUAL CLAIM.

In order to make killing murder, it is requisite that the party die within a year and a day after the stroke received, or cause of death administered; in the computation of which period the whole day upon which the hurt was done shall be reckoned the first.

Year Books. A series of reports of cases written in the Anglo-Norman language, commencing in the thirteenth century and extant either in manuscript copies or in print from 1290 to 1535—with very few gaps. There has been considerable controversy as to their origin. Plowden stated that there were four reporters who had an annual stipend paid by the king, but doubts were cast on this in the nineteenth century by Sir Frederick Pollock, Mr. L. O. Pike and others. It appears to be now generally agreed that they were notes of cases taken by apprentices to the law (q.v.) and, as suggested by Mr. W. C. Bolland, probably copied by scribes in *scriptoria*; for there are varying manuscripts of the same years. At first the years were issued as separate volumes, some years of Henry VI. being among the first books printed in England. Between the years 1587 and 1638 the separate years were reprinted as a collection in ten small folio volumes misnamed the "quarto" edition, covering the reigns of Edward III. to Henry VIII. In 1678-80 an edition in large folio, known as Maynard's edition, was issued. This contained eleven parts, some cases in the reigns of Edward I. and Edward II. being printed for the first time. In recent times, Years 20 to 35, Edward I. were printed with a translation by A. J. Horwood in five volumes, and 11 to 20 Edward III., with a translation by L. O. Pike in fifteen volumes. The Selden Society are now filling other gaps by the issue of original texts with translations. Citations of the Year Books are by the regnal years and *placita* (q.v.)., *e.g.*, 14 Henry VI., 18, which so closely resembles the citation of a statute as occasionally to lead to confusion. See *Liber assisarum*; *Long quinto*. For an account of the origin and contents of the Year Books, see Bolland, *The Year Books*, 1921; for a list of the various editions see 14 *Harvard Law Re-*

ciew, 73, and Maxwell, *Complete List of British and Colonial Law Reports*, 1918.

Year, Day and Waste, in the law of forfeiture (q.v.), is the right which the Crown had to hold the lands of felons for a year and a day, and to pull down the houses, cut down the woods and commit other waste thereon. This right was restricted by the Corruption of Blood Act, 1814, and ceased to exist (except, theoretically, on attainder for treason), when forfeiture was abolished.

Year to Year. See TENANT FROM YEAR TO YEAR.

Yeoman. "A yeoman," says Blackstone, "is he that hath free land of forty shillings by the year: who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act where the law requires one that is *probus et legalis homo*." Yeomen ranked next after gentlemen in order of precedence. Nowadays the word has no meaning in the law.

Yeomanry. For many years preceding the South African War of 1899-1902, this term was applied to the cavalry units of the Volunteers (q.v.). These units—which in many cases retain their original designation—were, by Order in Council made pursuant to the Territorial and Reserve Forces Act, 1909, transferred to the Territorial Force, now called the Territorial Army (q.v.).

Yeoman Usher. The deputy of Black Rod (q.v.), who appoints him.

Yeomen of the Guard. A corps of 140 old soldiers or non-commissioned officers appointed by the Constable of the Tower. The Captain of the Yeomen of the Guards is appointed by the King and goes in and out with the Ministry of the day. The other officers are appointed by the King on the recommendation of the captain; they are the lieutenant (who must have held the rank of lieutenant-colonel), the ensign (who must have been a major), and the "Clerk of the Cheque and Adjutant" and four "exors" or corporals, who must have held the rank of captain. The corps is not subject to military law and is under the Lord Chamberlain. Forty of the yeomen are warders of the Tower of London; the remainder are, in theory, the body-guard of the King; in reality, they are mere picturesque figures at State functions. They are and always have been, privileged from arrest on civil process.

Yield, in the law of real property, is to perform a service due by a tenant to his lord. Hence the usual form of reservation of a rent in a lease used to begin with the words "yielding and paying," (see RENDER), though now the words "yielding and" are always omitted.

Ymbringe Days. See EMBRING.

Yoke. The same, in Kent, as yardland (q.v.).

York. In the archbishopric of York there were formerly special customs as to the distribution of the estates of intestates. These customs were expressly preserved by the Statute of Distributions in 1672, but were abolished by the statute 19 & 20 Vict. c. 94. As to restrictions on testamentary powers, see RATIONABILE PARTE, ETC. The York Court of Record (formerly known as the York Sheriff's Court of Pleas) was originally created by a charter of 1396, and is now held under a charter of 1664. It has, within the City of York, a jurisdiction which originally was unlimited but which now, under an Order in Council of 17th May, 1890, is limited to claims not exceeding £10.

In ecclesiastical law, the provincial Court of the Archbishop of York is called the Chancery Court of York.

York (Herald). See HERALDS.

York-Antwerp Rules. The rules according to which questions as to general average (see AVERAGE) are generally settled by underwriters.

Yorkshire Land Registries are regulated by the Yorkshire Registry Act, 1884, which repeals and replaces the various Acts of Anne and George II., under which they had been established and carried on in each of the three ridings, exclusive of the City of York. See LAND REGISTRIES; MEMORIAL.

York, Statute of. The statute 12 Edw. 2, st. 1, repealed in 1881. See SUPER STATUTO QUE NUL SOIT, ETC.

Young Person. The Children Act, 1908, s. 131, defines this expression as meaning for the purposes of that Act, a person between fourteen and sixteen years of age. As regards an AGRICULTURAL GANG (q.v.), there is a different definition.

Youthful Offender. See REFORMATORY.

Z

Zealous Witness. See WITNESS.

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